

LEGISLATURE OF NEBRASKA  
NINETY-EIGHTH LEGISLATURE  
FIRST SESSION

**LEGISLATIVE BILL 282**

Introduced by Landis, 46

Read first time January 13, 2003

Committee: Revenue

A BILL

1 FOR AN ACT relating to revenue and taxation; to amend sections  
2 13-324, 77-3,117, 77-2702.04 to 77-2702.06, 77-2702.08,  
3 77-2702.10, 77-2702.18 to 77-2702.26, 77-2704.10,  
4 77-2704.13, 77-2704.14, 77-2704.24, 77-2708.01, 77-2713,  
5 77-27,119.03, 77-27,142, and 77-27,143, Reissue Revised  
6 Statutes of Nebraska, and sections 9-306.01, 13-319  
7 13-326, 77-2701, 77-2702.03, 77-2702.07, 77-2702.09,  
8 77-2702.11, 77-2702.14 to 77-2702.16, 77-2703,  
9 77-2704.09, 77-2704.26, 77-2705, 77-2708, 77-2711,  
10 77-2712.02 to 77-2712.05, 77-27,147, and 77-27,223,  
11 Revised Statutes Supplement, 2002; to change and  
12 eliminate sales and use tax provisions to carry out the  
13 streamlined sales tax system; to eliminate the Uniform  
14 Sales and Use Tax Administration Act; to harmonize  
15 provisions; to provide operative dates; to repeal the  
16 original sections; and to outright repeal section  
17 77-2702.12, Reissue Revised Statutes of Nebraska, and

LB 282

LB 282

1               sections 77-2702.13, 77-2702.17, 77-2706.02, 77-2712,  
2               77-2712.01, and 77-2712.08, Revised Statutes Supplement,  
3               2002.  
4   Be it enacted by the people of the State of Nebraska,

1                   Section 1.           Section 9-306.01, Revised Statutes  
2 Supplement, 2002, is amended to read:

3                   9-306.01. Designated premises shall mean one location  
4 selected by a licensed organization at which individual pickle  
5 cards may be sold as opportunities for participation in a lottery  
6 by the sale of pickle cards. Only one of the following types of  
7 locations may be selected as a designated premises: (1) In the case  
8 of an organization holding a certificate of exemption under section  
9 501(c)(3), (c)(4), or (c)(5) of the Internal Revenue Code or a  
10 volunteer fire company or volunteer first-aid, rescue, ambulance,  
11 or emergency squad, one piece of real property which is owned,  
12 leased, or used by the organization as its principal office, which  
13 is in use by the organization primarily for purposes other than the  
14 conduct of gaming activities, and which is not used in connection  
15 with any other type of retail business activity other than an  
16 occasional sale as defined in section ~~77-2702-09~~ 28 of this act; or  
17 (2) in the case of an organization holding a certificate of  
18 exemption under section 501(c)(7), (c)(8), (c)(10), or (c)(19) of  
19 the Internal Revenue Code, one piece of real property which is  
20 owned, leased, or used by the organization as its principal office  
21 and which is in use by the organization primarily for purposes  
22 other than the conduct of gaming activities. For purposes of this  
23 section, principal office shall mean the place where the principal  
24 affairs and business of the licensed organization are transacted,  
25 including where the officers and members assemble to discuss and  
26 transact the business of the organization, where its meetings are  
27 held, and generally where its records are kept.

28                   Sec. 2.   Section 13-319, Revised Statutes Supplement,

1 2002, is amended to read:

2           13-319. Any county by resolution of the governing body  
3 may impose a sales and use tax of one-half percent, one percent, or  
4 one and one-half percent upon the same transactions sourced as  
5 provided in sections 49 to 52 of this act within the county, but  
6 outside any incorporated municipality which has adopted a local  
7 sales tax pursuant to section 77-27,142, on which the state is  
8 authorized to impose a tax pursuant to the Nebraska Revenue Act of  
9 1967, as amended from time to time. Any sales and use tax imposed  
10 pursuant to this section must be used to finance public services  
11 provided by a public safety commission or to provide the county  
12 share of funds required under any other agreement executed under  
13 the Interlocal Cooperation Act or Joint Public Agency Act. A sales  
14 and use tax shall not be imposed pursuant to this section until an  
15 election has been held and a majority of the qualified electors  
16 have approved the tax pursuant to sections 13-322 and 13-323.

17           Sec. 3. Section 13-324, Reissue Revised Statutes of  
18 Nebraska, is amended to read:

19           13-324. (1) The Tax Commissioner shall administer all  
20 sales and use taxes adopted under section 13-319. The Tax  
21 Commissioner may prescribe forms and adopt and promulgate  
22 reasonable rules and regulations in conformity with the Nebraska  
23 Revenue Act of 1967, as amended, for the making of returns and for  
24 the ascertainment, assessment, and collection of taxes. The county  
25 shall furnish a certified copy of the adopting or repealing  
26 resolution to the Tax Commissioner in accordance with such rules  
27 and regulations. The tax shall begin the first day of the next  
28 calendar quarter following receipt by the Tax Commissioner of the

1 certified copy of the adopted resolution if the certified copy of  
2 the adopted resolution is received ~~sixty~~ one hundred twenty days  
3 prior to the start of the next calendar quarter. The Tax  
4 Commissioner shall provide at least sixty days notice of the  
5 adoption of the tax or a change in the rate to retailers. Notice  
6 shall be provided to retailers within the county. Notice to  
7 retailers may be provided through the web site of the Department of  
8 Revenue or by other electronic means.

9 (2) For resolutions containing a termination date, the  
10 termination date is the first day of a calendar quarter. The  
11 county shall furnish a certified statement to the Tax Commissioner  
12 no more than one hundred ~~twenty~~ eighty days and at least ~~sixty~~ one  
13 hundred twenty days before the termination date that the  
14 termination date stated in the resolution is still valid. If the  
15 certified statement is not furnished within the prescribed time,  
16 the tax shall remain in effect, and the Tax Commissioner shall  
17 continue to collect the tax until the first day of the calendar  
18 quarter which is at least ~~sixty~~ one hundred twenty days after  
19 receipt of the certified statement notwithstanding the termination  
20 date stated in the resolution. The Tax Commissioner shall provide  
21 at least sixty days notice of the termination of the tax to  
22 retailers. Notice shall be provided to retailers within the  
23 county. Notice to retailers may be provided through the web site  
24 of the Department or other electronic means.

25 (3) The Tax Commissioner shall collect the sales and use  
26 tax concurrently with collection of a state tax in the same manner  
27 as the state tax is collected. The Tax Commissioner shall remit  
28 monthly the proceeds of the tax to the counties imposing the tax,

1 after deducting the amount of refunds made and three percent of the  
2 remainder as an administrative fee necessary to defray the cost of  
3 collecting the tax and the expenses incident thereto. The Tax  
4 Commissioner shall keep full and accurate records of all money  
5 received and distributed. All receipts from the three-percent  
6 administrative fee shall be deposited in the state General Fund.

7 (4) Upon any claim of illegal assessment and collection,  
8 the taxpayer has the same remedies provided for claims of illegal  
9 assessment and collection of the state tax. It is the intention of  
10 the Legislature that the provisions of law which apply to the  
11 recovery of state taxes illegally assessed and collected apply to  
12 the recovery of sales and use taxes illegally assessed and  
13 collected under section 13-319.

14 (5) Boundary changes or the adoption of a sales and use  
15 tax by an incorporated municipality that affects any tax imposed by  
16 this section shall be governed as provided in subsections (3)  
17 through (9) of section 77-27,143.

18 Sec. 4. Section 13-326, Revised Statutes Supplement,  
19 2002, is amended to read:

20 13-326. (1) All relevant provisions of the Nebraska  
21 Revenue Act of 1967, as amended, not inconsistent with sections  
22 13-319, 13-324, and 13-325, shall govern transactions, proceedings,  
23 and activities pursuant to any sales and use tax imposed by a  
24 county.

25 (2) For the purposes of the sales and use tax imposed by  
26 a county, all retail sales, rentals, and leases, as defined and  
27 described in the Nebraska Revenue Act of 1967, are ~~consummated~~  
28 sourced as provided in sections 49 to 52 of this act.

1           (a) At the place where title, possession, or segregation  
2 takes place, with the exception of sales or leases or rentals for  
3 more than one year of motor vehicles, trailers, semitrailers, and  
4 motorboats, if a purchaser takes possession of tangible personal  
5 property within a county which has enacted a tax under section  
6 13-319, regardless of the business location of the Nebraska  
7 retailer,

8           (b) At the point of delivery of utility services and  
9 community antenna television services or where such services are  
10 provided, with the exception that (i) Nebraska intrastate message  
11 toll telephone and telegraph services, other than mobile  
12 telecommunications service as described in section 77-2706.02,  
13 which are consummated in the county where the customer is normally  
14 billed for such services and (ii) such mobile telecommunications  
15 service that originates and terminates in the same state shall be  
16 consummated in the county where the customer has a place of primary  
17 use,

18           (c) At the physical location of individual vending  
19 machines, and

20           (d) At the place designated on the application for  
21 registration for motor vehicles, trailers, semitrailers, and  
22 motorboats sold or leased or rented for more than one year.

23           Sec. 5. Section 77-3,117, Reissue Revised Statutes of  
24 Nebraska, is amended to read:

25           77-3,117. (1) When the Department of Revenue finds that  
26 the administration of the revenue laws might be more efficiently  
27 and economically conducted, the department may require or allow for  
28 rounding of all amounts on returns or reports, including amounts of

1 tax. Amounts will be rounded to the nearest dollar, with amounts  
2 ending in fifty cents or more rounded to the next highest dollar.

3 (2) The department may, on an annual basis, eliminate  
4 account balances of one dollar or less under uniform procedures  
5 developed by the department.

6 (3) For sales and use tax purposes, the tax computation  
7 shall be carried to the third decimal place and rounded down to a  
8 whole cent whenever the third decimal place is four or less and  
9 rounded up to a whole cent whenever the third decimal place is  
10 greater than four.

11 Sec. 6. Section 77-2701, Revised Statutes Supplement,  
12 2002, is amended to read:

13 77-2701. Sections 77-2701 to 77-27,135.01 and 77-27,222  
14 and sections 7 to 47, 49 to 52, and 59 to 69 of this act shall be  
15 known and may be cited as the Nebraska Revenue Act of 1967.

16 Sec. 7. (1) The sales tax rate may only be changed  
17 effective at the beginning of a calendar quarter.

18 (2) Any sales tax exemption or repeal of any sales tax  
19 exemption shall only be effective at the beginning of a calendar  
20 quarter.

21 (3) Any change in sales tax rate or base dealing with a  
22 service covering a period of time starting before and ending after  
23 the effective date of the change shall be effective as follows: (a)  
24 For a rate increase or base expansion, the change shall apply to  
25 the first billing period commencing on or after the effective date;  
26 and (b) for a rate decrease or base contraction, the change shall  
27 apply to bills rendered on or after the effective date.

28 Sec. 8. Section 77-2702.03, Revised Statutes Supplement,



1 2002, is amended to read:

2 ~~77-2702.03.~~ For purposes of sections ~~77-2702.03~~ 77-2703  
3 to 77-2713 and sections 8 to 47, 49 to 52, and 59 to 69 of this  
4 act, unless the context otherwise requires, the definitions found  
5 in sections ~~77-2702.04 to 77-2702.23, 77-2702.25, and 77-2702.26~~ 9  
6 to 47 of this act shall be used.

7 Sec. 9. Agent means a person appointed by a seller to  
8 represent the seller before the member states.

9 Sec. 10. Section 77-2702.24, Reissue Revised Statutes of  
10 Nebraska, is amended to read:

11 ~~77-2702.24.~~ For purposes of the Nebraska Revenue Act of  
12 ~~1967,~~ an item of property shall be deemed to be annexed Annexed to  
13 real estate or other property annexed to real estate if means  
14 attaching property to real estate so that (1) the property becomes  
15 real estate or (2) the installation or removal of the property  
16 requires specialized skills or tools and is performed or supervised  
17 by a recognized trade professional as determined by the Department  
18 of Revenue by rule and regulation.

19 Sec. 11. Section 77-2702.04, Reissue Revised Statutes of  
20 Nebraska, is amended to read:

21 ~~77-2702.04.~~ Business ~~shall mean~~ means any activity  
22 engaged in by any person or caused to be engaged in by him or her  
23 with the object of gain, benefit, or advantage, either direct or  
24 indirect.

25 Sec. 12. Certified automated system means software  
26 certified under the streamlined sales and use tax agreement to  
27 calculate the tax imposed by each jurisdiction on a transaction,  
28 determine the amount of tax to remit to the appropriate member

1 state, and maintain a record of the transaction.

2           Sec. 13. Certified service provider means an agent  
3 certified under the streamlined sales and use tax agreement to  
4 perform all of the seller's sales tax collection functions, other  
5 than to remit tax on its own retail purchases.

6           Sec. 14. Section 77-2702.05, Reissue Revised Statutes of  
7 Nebraska, is amended to read:

8           ~~77-2702.05.~~ Contractor or repairperson ~~shall mean~~ means  
9 any person who performs any repair services upon property annexed  
10 to, or who annexes property to, real estate, including leased  
11 property, and who, as a necessary and incidental part of performing  
12 such services, annexes property belonging to him or her to the real  
13 estate being so repaired or annexed. Contractor or repairperson  
14 shall not include any person who incorporates live plants into real  
15 estate except when such incorporation is incidental to the transfer  
16 of an improvement upon real estate or the real estate. The  
17 contractor or repairperson not electing to be taxed as a retailer  
18 shall be considered to be the consumer of such property furnished  
19 by him or her and annexed to the real estate being so repaired or  
20 annexed for all the purposes of the Nebraska Revenue Act of 1967.  
21 The contractor or repairperson:

22           (1) Shall be permitted to make an election that he or she  
23 will be taxed as a retailer in which case he or she shall not be  
24 considered the final consumer of property annexed to real estate  
25 except when the transfer of the annexed property is incidental to  
26 the transfer of an improvement upon real estate or the real estate;

27           (2) Shall be permitted to make an election that he or she  
28 will be taxed as the consumer of property annexed to real estate,

1 will pay the sales tax or remit the use tax at the time of  
2 purchase, and will maintain a tax-paid inventory; or

3 (3) Shall be permitted to make an election that he or she  
4 will be taxed as the consumer of property annexed to real estate  
5 and may issue a resale certificate when purchasing property that  
6 will be annexed to real estate. Such person shall then remit the  
7 appropriate use tax on any materials when withdrawn from inventory  
8 for the purpose of being annexed to real estate at the rate in  
9 effect at the time and place of the withdrawal from inventory.

10 The provisions of this section shall not excuse any  
11 person from the obligation to collect sales tax on retail sales of  
12 property not annexed to real estate or from the obligation to pay  
13 the sales tax or remit the use tax on tools and other materials  
14 consumed that are not annexed to real estate.

15 The Department of Revenue shall not prescribe any  
16 requirements of Nebraska sales revenue, percentage or otherwise,  
17 restricting any person's election. Any change in an election shall  
18 require prior approval by the Tax Commissioner.

19 Any change in the election shall, if filed on or prior to  
20 the fifteenth of the month, become effective at the beginning of  
21 the following month or, if filed after the fifteenth of the month,  
22 become effective on the first day of the next succeeding month.  
23 Any person who changes his or her election and becomes a contractor  
24 or repairperson shall pay the tax on all property in inventory  
25 which may be annexed to real estate at the time of making the  
26 change in election except when such contractor or repairperson  
27 elects to purchase inventory with a resale certificate. Any person  
28 who changes his or her election and becomes a retailer shall not be

1 entitled to a refund but shall receive a credit for the tax paid on  
2 property in inventory at the time the property is sold. The credit  
3 shall be applied against the tax collected on sales of such  
4 property.

5 Any contractor or repairperson who has not completed and  
6 filed an election as required in this section within three months  
7 after beginning to operate as a contractor or repairperson shall be  
8 considered a retailer for all periods until an election has been  
9 made.

10 Sec. 15. Delivery charges means charges by the seller of  
11 personal property or services for preparation and delivery to a  
12 location designated by the purchaser of personal property or  
13 services, including, but not limited to, transportation, shipping,  
14 postage, handling, crating, and packing.

15 Sec. 16. Direct mail means printed material delivered or  
16 distributed by United States mail or other delivery service to a  
17 mass audience or to addressees on a mailing list provided by the  
18 purchaser or at the direction of the purchaser when the cost of the  
19 items are not billed directly to the recipients. Direct mail  
20 includes tangible personal property supplied directly or indirectly  
21 by the purchaser to the direct mail seller for inclusion in the  
22 package containing the printed material. Direct mail does not  
23 include multiple items of printed material delivered to a single  
24 address.

25 Sec. 17. Section 77-2702.06, Reissue Revised Statutes of  
26 Nebraska, is amended to read:

27 ~~77-2702.06.~~ Engaged in business in this state ~~shall mean~~  
28 means any of the following:

1           (1) Maintaining, occupying, or using, permanently or  
2 temporarily, directly or indirectly, or through a subsidiary or  
3 agent, by whatever name called, an office, place of distribution,  
4 sales or sample room or place, warehouse, storage place, or other  
5 place of business in this state;

6           (2) Having any representative, agent, salesperson,  
7 canvasser, or solicitor operating in this state under the authority  
8 of the retailer or its subsidiary for the purpose of selling,  
9 delivering, or taking orders for any property;

10           (3) Deriving rentals from a lease of property in this  
11 state by any retailer;

12           (4) Soliciting retail sales of property from residents of  
13 this state on a continuous, regular, or systematic basis by means  
14 of advertising which is broadcast from or relayed from a  
15 transmitter within this state or distributed from a location within  
16 this state;

17           (5) Soliciting orders from residents of this state for  
18 property by mail, if the solicitations are continuous, regular,  
19 seasonal, or systematic and if the retailer benefits from any  
20 banking, financing, debt collection, or marketing activities  
21 occurring in this state or benefits from the location in this state  
22 of authorized installation, servicing, or repair facilities;

23           (6) Being owned or controlled by the same interests which  
24 own or control any retailer engaged in business in the same or  
25 similar line of business in this state; or

26           (7) Maintaining or having a franchisee or licensee  
27 operating under the retailer's trade name in this state if the  
28 franchisee or licensee is required to collect the tax under the

1 Nebraska Revenue Act of 1967.

2           Sec. 18. Entity-based exemption means an exemption based  
3 on who purchases the product or who sells the product.

4           Sec. 19. Governing board means the body containing  
5 representatives from each state that is a member of the streamlined  
6 sales and use tax agreement that is responsible for approving  
7 membership or withdrawal of states to the agreement, registering  
8 retailers to collect sales and use tax from purchasers in the  
9 member states, certifying service providers and automated systems  
10 for collecting sales and use taxes, approving monetary allowances  
11 for certified service providers and certified automated systems,  
12 resolving disputes among member states or with retailers or  
13 certified service providers, and otherwise executing the provisions  
14 of the agreement for the benefit of the member states under the  
15 terms of the agreement.

16           Sec. 20.       Section 77-2702.07, Revised Statutes  
17 Supplement, 2002, is amended to read:

18           ~~77-2702.07.~~   (1) Gross receipts ~~shall mean~~ means the  
19 total amount of the sale or lease or rental price, as the case may  
20 be, of the retail sales of retailers. valued in money whether  
21 received in money or otherwise, ~~without any deduction on account of~~  
22 ~~any of the following.~~

23           ~~(a) The cost of property sold.~~ In accordance with rules  
24 and regulations adopted and promulgated by the Tax Commissioner, a  
25 deduction may be taken if the retailer has purchased property for  
26 some purpose other than resale, has reimbursed his or her vendor  
27 for tax which the vendor is required to pay to the state or has  
28 paid the use tax with respect to the property, and has resold the

1 property prior to making any use of the property other than  
2 retention, demonstration, or display while holding it for sale in  
3 the regular course of business. If such a deduction is taken by  
4 the retailer, no refund or credit will be allowed to his or her  
5 vendor with respect to the sale of the property,

6 (b) The cost of the materials used, labor or service  
7 costs, interest paid, losses, or any other expense,

8 (c) The cost of transportation of the property,

9 (d) The amount of any excise or property tax levied  
10 against the property except as otherwise provided in the Nebraska  
11 Revenue Act of 1967, or

12 (e) The amount charged for warranties, guarantees, or  
13 maintenance agreements.

14 (2) Gross receipts of every person engaged as a public  
15 utility specified in this subsection or as a community antenna  
16 television service operator or any person involved in connecting  
17 and installing services defined in subdivision (2)(a), (b), or (d)  
18 of this section shall mean:

19 (a) In the furnishing of telephone communication service,  
20 other than mobile telecommunications service as described in  
21 section ~~77-2706.02~~ 52 of this act, the gross income received from  
22 furnishing local exchange telephone service and intrastate message  
23 toll telephone service and private communications service. In the  
24 furnishing of mobile telecommunications service as described in  
25 section ~~77-2706.02~~ 52 of this act, the gross income received from  
26 furnishing mobile telecommunications service that originates and  
27 terminates in the same state to a customer with a place of primary  
28 use in Nebraska; - Gross receipts shall not mean (i) the gross

1 ~~income, including division of revenue, settlements, or carrier~~  
2 ~~access charges received on or after January 1, 1984, from the sale~~  
3 ~~of a telephone communication service to a communication service~~  
4 ~~provider for purposes of furnishing telephone communication service~~  
5 ~~or (ii) the gross income attributable to services rendered using a~~  
6 ~~prepaid telephone calling arrangement. For purposes of this~~  
7 ~~subdivision, a prepaid telephone calling arrangement shall mean the~~  
8 ~~right to exclusively purchase telecommunications service that are~~  
9 ~~paid for in advance that enables the origination of calls using an~~  
10 ~~access number or authorization code, whether manually or~~  
11 ~~electronically dialed,~~

12 (b) In the furnishing of telegraph service, the gross  
13 income received from the furnishing of intrastate telegraph  
14 services;

15 (c) In the furnishing of gas, electricity, sewer, and  
16 water service, ~~except water used for irrigation of agricultural~~  
17 ~~lands and manufacturing purposes,~~ the gross income received from  
18 the furnishing of such services upon billings or statements  
19 rendered to consumers for such utility services; ~~and~~

20 (d) In the furnishing of community antenna television  
21 service, the gross income received from the furnishing of such  
22 community antenna television service as regulated under sections  
23 18-2201 to 18-2205 or 23-383 to 23-388; ~~and -~~

24 (e) The Gross receipts shall also mean gross income  
25 received from the provision, installation, construction, servicing,  
26 or removal of property used in conjunction with the furnishing,  
27 installing, or connecting of any public utility services specified  
28 in subdivision (2)(a) or (b) of this section or community antenna



1 television service specified in subdivision (2)(d) of this section.  
2 ~~Gross receipts shall not mean gross income received from telephone~~  
3 ~~directory advertising.~~

4 (3) Gross receipts of every person engaged in selling,  
5 leasing, or otherwise providing intellectual or entertainment  
6 property ~~shall mean~~ means:

7 (a) In the furnishing of computer software, the gross  
8 income received, including the charges for coding, punching, or  
9 otherwise producing any computer software and the charges for the  
10 tapes, disks, punched cards, or other properties furnished by the  
11 seller; and

12 (b) In the furnishing of videotapes, movie film,  
13 satellite programming, satellite programming service, and satellite  
14 television signal descrambling or decoding devices, the gross  
15 income received from the license, franchise, or other method  
16 establishing the charge. ~~except the gross income received from~~  
17 ~~videotape and film rentals, satellite programming, and satellite~~  
18 ~~programming service when the sales tax or the admission tax is~~  
19 ~~charged under the Nebraska Revenue Act of 1967 and except as~~  
20 ~~provided in section 77-2704.39.~~

21 (4) Gross Commencing October 1, 2002, gross receipts for  
22 providing a service ~~shall mean~~ means:

23 (a) The gross income received for building cleaning and  
24 maintenance, pest control, and security;

25 (b) The gross income received for motor vehicle washing,  
26 waxing, towing, and painting;

27 (c) The gross income received for computer software  
28 training; and

1           (d) The gross income received for installing and applying  
2     tangible personal property if the sale of the property is subject  
3     to tax.

4           (5) Gross receipts includes the sale of admissions which  
5     means the right or privilege to have access to or to use a place or  
6     location. When an admission to an activity is combined with the  
7     solicitation of a contribution, the portion or the amount charged  
8     representing the fair market price of the admission shall be  
9     considered a retail sale subject to the tax imposed by section  
10    77-2703. The organization conducting the activity shall determine  
11    the amount properly attributable to the purchase of the privilege,  
12    benefit, or other consideration in advance, and such amount shall  
13    be clearly indicated on any ticket, receipt, or other evidence  
14    issued in connection with the payment.

15          (6) Gross receipts includes the sale of live plants  
16    incorporated into real estate except when such incorporation is  
17    incidental to the transfer of an improvement upon real estate or  
18    the real estate.

19          (7) Gross receipts includes the sale of any property  
20    annexed to real estate and any associated labor by a person  
21    electing to be taxed as a retailer pursuant to subdivision (1) of  
22    section 14 of this act except when such annexation is incidental to  
23    the transfer of an improvement upon real estate or the real estate.

24          (8) Gross receipts includes the sale of prepaid telephone  
25    calling arrangements and the recharge of prepaid telephone calling  
26    arrangements. If the sale or recharge of a prepaid telephone  
27    calling arrangement does not take place at the vendor's place of  
28    business, the sale or recharge shall be conclusively determined to

1 take place at the customer's shipping address or, if there is no  
2 item shipped, at the customer's billing address. For purposes of  
3 this subdivision, a prepaid telephone calling arrangement means the  
4 right to exclusively purchase telecommunications services that are  
5 paid for in advance that enables the origination of calls using an  
6 access number or authorization code, whether manually or  
7 electronically dialed.

8 (9) Gross receipts shall does not include: any of the  
9 following:

10 (a) Cash discounts allowed and taken on sales;

11 (b) The amount of any rebate granted by a motor vehicle  
12 or motorboat manufacturer or dealer at the time of sale of the  
13 motor vehicle or motorboat, which rebate functions as a discount  
14 from the sales price of the motor vehicle or motorboat; or

15 (c) The (e) Sales price of property or services returned  
16 or rejected by customers when the full sales price is refunded  
17 either in cash or credit. +

18 (d) The amount charged for finance charges, carrying  
19 charges, service charges, or interest from credit extended on sales  
20 of property or services under contracts providing for deferred  
21 payments of the purchase price if such charges are not used as a  
22 means of avoiding imposition of the tax upon the actual sales price  
23 of the property or services;

24 (e) The value of property taken by a seller in trade as  
25 all or a part of the consideration for a sale of property of any  
26 kind or nature;

27 (f) The value of a motor vehicle or motorboat taken by  
28 any person in trade as all or a part of the consideration for a

1 sale of another motor vehicle or motorboat,

2           ~~(g) Receipts from conditional sale contracts, installment~~  
3 ~~sale contracts, rentals, and leases executed in writing prior to~~  
4 ~~June 1, 1967, and with delivery of the property prior to June 1,~~  
5 ~~1967, if such conditional sale contracts, installment sale~~  
6 ~~contracts, rentals, or leases are for a fixed price and are not~~  
7 ~~subject to negotiation or alteration, or~~

8           ~~(h) Except as provided in subsection (2) of this section,~~  
9 ~~until October 1, 2002, the amount charged for labor or services~~  
10 ~~rendered in installing or applying the property sold if such amount~~  
11 ~~is separately stated and such separate statement is not used as a~~  
12 ~~means of avoiding imposition of the tax upon the actual sales price~~  
13 ~~of the property.~~

14           Sec. 21. Section 77-2702.08, Reissue Revised Statutes of  
15 Nebraska, is amended to read:

16           ~~77-2702.08.~~ In this state or within the state ~~shall mean~~  
17 means within the exterior limits of the State of Nebraska and ~~shall~~  
18 ~~include~~ includes all the territory within these limits owned by or  
19 ceded to the United States of America.

20           Sec. 22. (1) Lease or rental means any transfer of  
21 possession or control of tangible personal property for a fixed or  
22 indeterminate term for consideration. A lease or rental may  
23 include future options to purchase or extend.

24           (2) Lease or rental does not include:

25           (a) A transfer of possession or control of property under  
26 a security agreement or deferred payment plan that requires the  
27 transfer of title upon completion of the required payments;

28           (b) A transfer of possession or control of property under

1 an agreement that requires the transfer of title upon completion of  
2 required payments and payment of an option price does not exceed  
3 the greater of one hundred dollars or one percent of the total  
4 required payments;

5 (c) Providing tangible personal property along with an  
6 operator for a fixed or indeterminate period of time. A condition  
7 of this exclusion is that the operator is necessary for the  
8 equipment to perform as designed. For purposes of this subsection,  
9 an operator must do more than maintain, inspect, or set up the  
10 tangible personal property; or

11 (d) Agreements covering motor vehicles and trailers where  
12 the amount of consideration may be increased or decreased by  
13 reference to the amount realized upon sale or disposition of the  
14 property as defined for federal income tax purposes.

15 (3) This definition shall be used for sales and use tax  
16 purposes regardless if a transaction is characterized as a lease or  
17 rental under generally accepted accounting principles, the Internal  
18 Revenue Code of 1986, as amended, the Uniform Commercial Code, or  
19 other provisions of federal, state, or local law.

20 (4) This definition shall be applied only prospectively  
21 from the operative date of this section and shall have no  
22 retroactive impact on existing leases or rentals.

23 Sec. 23. Section 77-2702.25, Reissue Revised Statutes of  
24 Nebraska, is amended to read:

25 ~~77-2702.25.~~ (1) Maintenance agreement ~~shall mean~~ means  
26 any contract or agreement to provide or pay for the maintenance,  
27 repair, or refurbishing of an item, the sale of which is subject to  
28 tax under section 77-2703, for a stated period of time or interval

1 of use. Maintenance agreement ~~shall include~~ includes any such  
2 agreement whether or not the agreement requires additional payments  
3 for some or all of the parts or services provided under the  
4 agreement. Maintenance agreement ~~shall include~~ includes contracts  
5 or agreements designated as warranties, extended warranties,  
6 guarantees, service agreements, maintenance agreements, or any  
7 similar term.

8 (2) Maintenance agreement ~~shall~~ does not include any  
9 contract or agreement subject to the premium tax under Chapter 77,  
10 article 9, from a service contract business operating with a  
11 certificate of authority from the Department of Insurance.

12 (3) The selling price of a maintenance agreement shall  
13 not have to be separately stated and may be included as a part of  
14 the selling price of the item covered.

15 Sec. 24. Member states means any and all states that  
16 have been approved initially or later admitted by the governing  
17 board for participation in the streamlined sales and use tax  
18 agreement.

19 Sec. 25. Model 1 seller means a seller that has selected  
20 a certified service provider as its agent to perform all the  
21 seller's sales and use tax functions, other than the sellers  
22 obligation to remit tax on its own retail purchases.

23 Sec. 26. Model 2 seller means a seller that has selected  
24 a certified automated system to perform part of its sales and use  
25 tax functions, but retains responsibility for remitting the tax.

26 Sec. 27. Model 3 seller means a seller that has sales in  
27 at least five member states, has total annual sales revenue of at  
28 least five hundred million dollars, has a proprietary system that

1 calculates the amount of tax due each jurisdiction, and has entered  
2 into a performance agreement with the member states that  
3 establishes a tax performance standard for the seller. Seller  
4 includes an affiliated group of sellers using the same proprietary  
5 system.

6           Sec. 28.           Section 77-2702.09, Revised Statutes  
7 Supplement, 2002, is amended to read:

8           ~~77-2702.09.~~ Occasional sale ~~shall mean~~ means:

9           (1) A sale, but not a lease or rental, of property which  
10 is the subject of any intercompany sale or transfer involving any  
11 parent, subsidiary, or brother-sister company relationship under  
12 section 77-2704.28 and which was either originally acquired prior  
13 to June 1, 1967, or, if acquired thereafter, the seller or  
14 transferor directly or indirectly has previously paid a sales or  
15 use tax thereon, including:

16           (a) From one corporation to another corporation pursuant  
17 to a reorganization. For purposes of this subdivision,  
18 reorganization ~~shall mean~~ means a statutory merger or consolidation  
19 or the acquisition by a corporation of substantially all of the  
20 properties of another corporation when the consideration is solely  
21 all or a part of the voting stock of the acquiring corporation or  
22 of its parent or subsidiary corporation;

23           (b) In connection with the winding up, dissolution, or  
24 liquidation of a corporation only when there is a distribution of  
25 the property of such corporation to the shareholders in kind if the  
26 portion of the property so distributed to the shareholder is  
27 substantially in proportion to the share of stock or securities  
28 held by the shareholder;

1           (c) To a corporation for the purpose of organization of  
2 such corporation or the contribution of additional capital to such  
3 corporation when the former owners of the property transferred are  
4 immediately after the transfer in control of the corporation and  
5 the stock or securities received by each is substantially in  
6 proportion to his or her interest in the property prior to the  
7 transfer;

8           (d) To a partnership in the organization of such  
9 partnership if the former owners of the property transferred are  
10 immediately after the transfer members of such partnership and the  
11 interest in the partnership received by each is substantially in  
12 proportion to his or her interest in the property prior to the  
13 transfer;

14           (e) From a partnership to the members thereof when made  
15 in kind in the dissolution of such partnership if the portion of  
16 the property so distributed to the members of the partnership is  
17 substantially in proportion to the interest in the partnership held  
18 by the members;

19           (f) To a limited liability company in the organization of  
20 such limited liability company if the former owners of the property  
21 transferred are immediately after the transfer members of such  
22 limited liability company and the interest in the limited liability  
23 company received by each is substantially in proportion to his or  
24 her interest in the property prior to the transfer;

25           (g) From a limited liability company to the members  
26 thereof when made in kind in the dissolution of such limited  
27 liability company if the portion of the property so distributed to  
28 the members of the limited liability company is substantially in



1 proportion to the interest in the limited liability company held by  
2 the members;

3 (h) From one limited liability company to another limited  
4 liability company pursuant to a reorganization; or

5 (i) Any transaction between two persons that qualifies as  
6 a tax-free transaction under the Internal Revenue Code;

7 (2) A sale of household goods, personal effects, and  
8 services if each of the following conditions is met and if any one  
9 condition is not met then the entire gross receipts shall be  
10 subject to the tax imposed by section 77-2703:

11 (a) Such sales are by an individual at his or her  
12 residence or if more than one individual's property is involved  
13 such sales are by one of the individuals involved at the residence  
14 of one of the individuals;

15 (b) Such sales do not occur at any residence for more  
16 than three days during a calendar year;

17 (c) Such individual or individuals or any member of any  
18 of their households does not conduct or engage in a trade or  
19 business in which similar items are sold or services provided;

20 (d) Such property sold was originally acquired for and  
21 used for personal use or the service provided may be performed at  
22 any individual residence without specialized equipment or supplies;  
23 and

24 (e) Such property is not otherwise excepted from the  
25 definition of occasional sale;

26 (3) Commencing with any transaction occurring on or after  
27 October 1, 1985, any sale of business or farm machinery and  
28 equipment if each of the following conditions is met and if any one

1 condition is not met the entire gross receipts shall be subject to  
2 the tax imposed by section 77-2703:

3 (a) Such machinery or equipment was used by the seller or  
4 seller's predecessor in a sale described in subdivision (1) of this  
5 section as a depreciable capital asset in connection with the farm  
6 or business for a period of at least one year;

7 (b) Such property was originally acquired prior to June  
8 1, 1967, or if acquired thereafter, the seller or seller's  
9 predecessor in a sale described in subdivision (1) of this section  
10 directly or indirectly has previously paid a sales or use tax  
11 thereon; and

12 (c) Such property is not otherwise excepted from the  
13 definition of occasional sale;

14 (4) Commencing October 1, 1985, a sale by an organization  
15 created exclusively for religious purposes or an agent of the  
16 organization for such sale if each of the following conditions is  
17 met and if any one condition is not met then the entire gross  
18 receipts shall be subject to the tax imposed by section 77-2703:

19 (a) All sales occur during an activity conducted by such  
20 organization or, if more than one organization is involved, by one  
21 of the organizations owning property being sold;

22 (b) The organization only sells property it owns or  
23 provides the service during one such activity in a calendar year;  
24 and

25 (c) The activity does not last longer than three  
26 consecutive days; and

27 (5) Any sale that is made in connection with the sale to  
28 a single buyer of all or substantially all of a trade or business

1 if the seller or seller's predecessor in a sale described in  
2 subdivision (1) of this section directly or indirectly has  
3 previously paid a sales or use tax thereon. This subdivision shall  
4 apply to any transaction occurring on or after October 1, 1985.

5 Commencing October 1, 1985, occasional sale shall not  
6 include any sale directly by or any sale which is supervised or  
7 aided by an auctioneer or an agent or employee of an auctioneer.

8 Except for a sale listed in subdivision (1) of this  
9 section, an occasional sale shall not mean any sale of motor  
10 vehicles, trailers, and semitrailers as defined in section 60-301  
11 or, on or after January 1, 1997, any sale of a motorboat as defined  
12 in section 37-1204.

13 Sec. 29. Section 77-2702.10, Reissue Revised Statutes of  
14 Nebraska, is amended to read:

15 ~~77-2702.10.~~ Person ~~shall mean~~ means any individual,  
16 firm, partnership, limited liability company, joint venture,  
17 association, social club, fraternal organization, corporation,  
18 estate, trust, business trust, receiver, trustee, syndicate,  
19 cooperative, assignee, or other group or combination acting as a  
20 unit. Person ~~shall also mean~~ also means the United States or any  
21 agency of the United States, this state or any agency of this  
22 state, or any city, county, district, or other political  
23 subdivision of this state or any agency thereof.

24 Sec. 30. Product-based exemption means an exemption  
25 based on the description of the product that is the subject of the  
26 transaction and not based on the identity of the person purchasing  
27 or selling the product or the ultimate use of the product.

28 Sec. 31. Section 77-2702.26, Reissue Revised Statutes of

1 Nebraska, is amended to read:

2 ~~77-2702.26.~~ Property ~~shall mean~~ means all tangible and  
3 intangible property that is subject to tax under subsection (1) of  
4 section 77-2703 and all rights, licenses, and franchises that are  
5 subject to tax under such subsection.

6 Sec. 32. Section 77-2702.11, Revised Statutes  
7 Supplement, 2002, is amended to read:

8 ~~77-2702.11.~~ Purchase ~~shall mean~~ means any transfer of  
9 title or possession, exchange, barter, lease, or rental,  
10 conditional or otherwise, in any manner or by any means, of  
11 property for a consideration, including a transfer of the  
12 possession of property in which the seller retains the title as  
13 security for the payment of the price and a transfer for a  
14 consideration of property which has been produced, fabricated, or  
15 printed to the special order of the customer. Purchase ~~shall also~~  
16 ~~mean~~ also means the provision of a service for a consideration.

17 Sec. 33. Purchase price applies to the measure subject  
18 to use tax and has the same meaning as sales price.

19 Sec. 34. Purchaser means a person to whom a sale of  
20 personal property is made or to whom a service is furnished.

21 Sec. 35. Retail sale or sale at retail means any sale,  
22 lease, or rental for any purpose other than for resale, sublease,  
23 or subrent.

24 Sec. 36. Section 77-2702.14, Revised Statutes  
25 Supplement, 2002, is amended to read:

26 ~~77-2702.14.~~ (1) Retailer ~~shall mean+~~ means any seller.

27 (2) To facilitate the proper administration of the  
28 Nebraska Revenue Act of 1967, the following persons have the duties

1 and responsibilities of sellers for the purposes of sales and use  
 2 taxes:

3 (a) Any person ~~(a) Any seller engaged in the business of~~  
 4 ~~making sales subject to tax under section 77-2703 or in the~~  
 5 business of making sales subject to tax under section 77-2703 at  
 6 auction of property owned by the person or others; ~~or~~ Retailer  
 7 ~~shall mean,~~ in the case of sales at auction when the person  
 8 collecting the proceeds of the auction is not the auctioneer or an  
 9 agent or employee of the auctioneer, the

10 (b) Any person collecting the proceeds of the auction,  
 11 other than the owner of the property, together with his or her  
 12 principal, if any, when the person collecting the proceeds of the  
 13 auction is not the auctioneer or an agent or employee of the  
 14 auctioneer. The seller and retailer shall does not include the  
 15 auctioneer in such case;

16 (c) ~~(b)~~ Every person who has elected to be considered a  
 17 retailer pursuant to subdivision (1) of section ~~77-2702.05~~ 14 of  
 18 this act;

19 (d) ~~(c)~~ Every person operating, organizing, or promoting  
 20 a flea market, craft show, fair, or similar event; and

21 (e) ~~(d)~~ Every person engaged in the business of providing  
 22 any service defined in subsection (4) of section ~~77-2702.07~~ 20 of  
 23 this act.

24 ~~(2) Retailer shall not mean:~~

25 (3) For the proper administration of the Nebraska Revenue  
 26 Act of 1967, the following persons do not have the duties and  
 27 responsibilities of a seller for purposes of sales and use taxes:

28 (a) Any person who leases or rents films when an

1 admission tax is charged under the Nebraska Revenue Act of 1967;

2           (b) Any person who leases or rents ~~or~~ railroad rolling  
3 stock interchanged pursuant to the provisions of the federal  
4 Interstate Commerce Act;

5           (c) ~~(b)~~ Any person engaged in the business of furnishing  
6 rooms in a facility licensed under the Health Care Facility  
7 Licensure Act in which rooms, lodgings, or accommodations are  
8 regularly furnished for a consideration or a facility operated by  
9 an educational institution established under Chapter 79 or Chapter  
10 85 in which rooms are regularly used to house students for a  
11 consideration for periods in excess of thirty days; or

12           (d) ~~(e)~~ Any person making sales at a flea market, craft  
13 show, fair, or similar event ~~who~~ when such person does not have a  
14 sales tax permit and ~~who~~ has arranged to pay sales taxes collected  
15 to the person operating, organizing, or promoting such event.

16           Sec. 37.           Section 77-2702.15, Revised Statutes  
17 Supplement, 2002, is amended to read:

18           ~~77-2702.15.~~ Sale shall mean means any transfer of title  
19 or possession or segregation in contemplation of transfer of title  
20 or possession, exchange, barter, lease, or rental, conditional or  
21 otherwise, in any manner or by any means, of property for a  
22 consideration or the provision of service for a consideration.  
23 Sale shall include, but not be includes, but is not limited to:

24           (1) The producing, fabricating, processing, printing, or  
25 imprinting of property for a consideration for consumers who  
26 furnish either directly or indirectly the materials used in the  
27 producing, fabricating, processing, printing, or imprinting; and

28           (2) ~~The furnishing and distributing of property for a~~

1 consideration by social clubs and fraternal organizations to their  
2 members or others,

3           ~~(3) The furnishing, preparing, or serving for a~~  
4 ~~consideration of food, meals, or drinks,~~

5           ~~(4) A transaction whereby the possession of property is~~  
6 ~~transferred but the seller retains the title as security for the~~  
7 ~~payment of the price,~~

8           ~~(5) A transfer for a consideration of the title or~~  
9 ~~possession of property which has been produced, fabricated, or~~  
10 ~~printed to the special order of the customer, and~~

11           ~~(6) The renting or furnishing for periods of less than~~  
12 ~~thirty days of any room or rooms, lodgings, or accommodations in~~  
13 ~~any hotel, motel, inn, tourist camp, tourist cabin, or any other~~  
14 ~~place, except a health care facility licensed under the Health Care~~  
15 ~~Facility Licensure Act in which rooms, lodgings, or accommodations~~  
16 ~~are regularly furnished for a consideration or a facility operated~~  
17 ~~by an educational institution established under Chapter 79 or~~  
18 ~~Chapter 85 in which rooms are regularly used to house students for~~  
19 ~~a consideration for periods in excess of thirty days.~~

20           Sec. 38.           Section 77-2702.16, Revised Statutes  
21 Supplement, 2002, is amended to read:

22           ~~77-2702.16.~~ Sale for resale ~~shall mean~~ means a sale of  
23 property or provision of a service to any purchaser who is  
24 purchasing such property or service for the purpose of reselling it  
25 in the normal course of his or her business, either in the form or  
26 condition in which it is purchased or as an attachment to or  
27 integral part of other property or service. A sale for resale  
28 ~~shall include~~ includes a sale of property to a contractor or

1 repairperson electing to be taxed as a retailer under subdivision  
2 (1) of section ~~77-2702.05~~ 14 of this act, to a contractor or  
3 repairperson being taxed as the consumer of property and electing a  
4 tax-free inventory under subdivision (3) of section ~~77-2702.05~~ 14  
5 of this act, or to a purchaser for the sole purpose of that  
6 purchaser renting or leasing such property to another person, with  
7 rent or lease payments set at a fair market value, or film rentals  
8 for use in a place where an admission is charged that is subject to  
9 taxation under the Nebraska Revenue Act of 1967 but not if  
10 incidental to the renting or leasing of real estate.

11           Sec. 39. (1) Sales price applies to the measure subject  
12 to sales tax and means the total amount of consideration, including  
13 cash, credit, property, and services, for which personal property  
14 or services are sold, leased, or rented, valued in money, whether  
15 received in money or otherwise, without any deduction for the  
16 following:

17                   (a) The seller's cost of the property sold;

18                   (b) The cost of materials used, the cost of labor or  
19 service, interest, losses, all costs of transportation to the  
20 seller, all taxes imposed on the seller, and any other expense of  
21 the seller;

22                   (c) Charges by the seller for any services necessary to  
23 complete the sale;

24                   (d) Delivery charges;

25                   (e) Installation charges; and

26                   (f) The value of exempt personal property given to the  
27 purchaser where taxable and exempt personal property have been  
28 bundled together and sold by the seller as a single product or



1 piece of merchandise.

2 (2) Sales price does not include:

3 (a) Any discounts, including cash, term, or coupons that  
4 are not reimbursed by a third party that are allowed by a seller  
5 and taken by a purchaser on a sale;

6 (b) Interest, financing, and carrying charges from credit  
7 extended on the sale of personal property or services, if the  
8 amount is separately stated on the invoice, bill of sale, or  
9 similar document given to the purchaser;

10 (c) Any taxes legally imposed directly on the consumer  
11 that are separately stated on the invoice, bill of sale, or similar  
12 document given to the purchaser; and

13 (d) Credit for any trade-in as follows:

14 (i) The value of property taken by a seller in trade as  
15 all or a part of the consideration for a sale of property of any  
16 kind or nature;

17 (ii) The value of a motor vehicle or motorboat taken by  
18 any person in trade as all or a part of the consideration for a  
19 sale of another motor vehicle or motorboat.

20 Sec. 40. Section 77-2702.18, Reissue Revised Statutes of  
21 Nebraska, is amended to read:

22 ~~77-2702.18.~~ Seller ~~shall include~~ includes every person  
23 engaged in the business of selling, leasing, or renting property of  
24 a kind the gross receipts from the retail sale, lease, or rental of  
25 which are required to be included in the measure of the sales tax.

26 Sec. 41. Section 77-2702.19, Reissue Revised Statutes of  
27 Nebraska, is amended to read:

28 ~~77-2702.19.~~ ~~(1)~~ Storage ~~shall include~~ includes any

1 retention in this state for any purposes except sale in the regular  
2 course of business or subsequent use solely outside this state of  
3 property purchased from a retailer, other than property which will  
4 enter into or become an ingredient or component part of property  
5 manufactured, processed, or fabricated for ultimate sale at retail.

6 ~~(2) Except for a transaction that is subject to sales tax~~  
7 ~~under the Nebraska Revenue Act of 1967, storage shall not include~~  
8 ~~the keeping, retaining, or exercising of any right or power over~~  
9 ~~property for the purpose of subsequently transporting it outside~~  
10 ~~the state or for the purpose of being processed, fabricated, or~~  
11 ~~manufactured into, attached to, or incorporated into other property~~  
12 ~~to be transported outside the state and thereafter used solely~~  
13 ~~outside the state.~~

14 Sec. 42. Streamlined sales and use tax agreement means  
15 the streamlined sales and use tax agreement approved by the  
16 implementing states on November 12, 2002.

17 Sec. 43. Section 77-2702.20, Reissue Revised Statutes of  
18 Nebraska, is amended to read:

19 ~~77-2702.20.~~ Tangible personal property shall mean means  
20 personal property which may be seen, weighed, measured, felt, or  
21 touched or which is in any other manner perceptible to the senses.  
22 Tangible personal property includes electricity, water, gas, steam,  
23 and prewritten computer software. , including tangible personal  
24 property which is used to convey computer software.

25 Sec. 44. Section 77-2702.21, Reissue Revised Statutes of  
26 Nebraska, is amended to read:

27 ~~77-2702.21.~~ Tax Commissioner shall mean means the Tax  
28 Commissioner of the State of Nebraska.

1                   Sec. 45. Section 77-2702.22, Reissue Revised Statutes of  
2 Nebraska, is amended to read:

3                   ~~77-2702.22.~~ Taxpayer ~~shall mean~~ means any person subject  
4 to a tax imposed by sections ~~77-2702.03~~ 77-2703 to 77-2713 and  
5 sections 8 to 47, 49 to 52, and 59 to 69 of this act.

6                   Sec. 46. Section 77-2702.23, Reissue Revised Statutes of  
7 Nebraska, is amended to read:

8                   ~~77-2702.23.~~ (1) Use ~~shall mean~~ means the exercise of any  
9 right or power over property incident to the ownership or  
10 possession of that property, except that use ~~shall~~ does not include  
11 the sale of that property in the regular course of business or the  
12 exercise of any right or power over property which will enter into  
13 or become an ingredient or component part of property manufactured,  
14 processed, or fabricated for ultimate sale at retail. Use  
15 specifically ~~shall include~~ includes the annexation of property to  
16 real estate or the withdrawal of property from inventory, which  
17 inventory is subject to sales tax under the Nebraska Revenue Act of  
18 1967 or would be subject to the sales tax under the act except for  
19 an election under section ~~77-2702.05~~ 14 of this act, for annexation  
20 to real estate or to improvements upon real estate without regard  
21 to the fact that such property is manufactured, processed, or  
22 fabricated prior to annexation or that such real estate and  
23 improvements may subsequently be sold as such.

24                   ~~(2) Except for a transaction that is subject to sales tax~~  
25 ~~under the Nebraska Revenue Act of 1967, use shall not include the~~  
26 ~~keeping, retaining, or exercising of any right or power over~~  
27 ~~property for the purpose of subsequently transporting it outside~~  
28 ~~the state or for the purpose of being processed, fabricated, or~~

1 manufactured into, attached to, or annexed to other property to be  
2 transported outside the state and thereafter used solely outside  
3 the state.

4 Sec. 47. Use-based exemption means an exemption based on  
5 the purchaser's ultimate use of the product.

6 Sec. 48. Section 77-2703, Revised Statutes Supplement,  
7 2002, is amended to read:

8 77-2703. (1) There is hereby imposed a tax at the rate  
9 provided in section 77-2701.02 upon the gross receipts from all  
10 sales of tangible personal property sold at retail in this state,  
11 the gross receipts of every person engaged as a public utility, as  
12 a community antenna television service operator or any person  
13 involved in the connecting and installing of the services defined  
14 in subdivision (2)(a), (b), or (d) of section ~~77-2702.07~~ 20 of this  
15 act, or as a retailer of intellectual or entertainment properties  
16 referred to in subsection (3) of section ~~77-2702.07~~ 20 of this act,  
17 the gross receipts from the sale of admissions in this state, the  
18 gross receipts from the sale of warranties, guarantees, service  
19 agreements, or maintenance agreements when the items covered are  
20 subject to tax under this section, and the gross receipts from the  
21 provision of services defined in subsection (4) of section 20 of  
22 this act. Except as provided in section 7 of this act, when  
23 ~~77-2702.07. For purposes of this subsection, the provision of~~  
24 ~~services shall be deemed to be in this state for services provided~~  
25 ~~to real estate if the real estate is located in this state, for~~  
26 ~~services provided to personal property if the personal property is~~  
27 ~~located in this state and the service is rendered for use in this~~  
28 ~~state, and for computer software training under subdivision (4)(c)~~

1 of section 77-2702.07 if the training is performed at a location  
2 that is within this state for a customer located within this state.  
3 When there is a sale, the tax shall be imposed at the rate in  
4 effect at the time the gross receipts are realized under the  
5 accounting basis used by the retailer to maintain his or her books  
6 and records.

7 (a) The tax imposed by this section shall be collected by  
8 the retailer from the consumer. It shall constitute a part of the  
9 purchase price and until collected shall be a debt from the  
10 consumer to the retailer and shall be recoverable at law in the  
11 same manner as other debts. The tax required to be collected by  
12 the retailer from the consumer constitutes a debt owed by the  
13 retailer to this state.

14 (b) It is unlawful for any retailer to advertise, hold  
15 out, or state to the public or to any customer, directly or  
16 indirectly, that the tax or part thereof will be assumed or  
17 absorbed by the retailer, that it will not be added to the selling,  
18 renting, or leasing price of the property sold, rented, or leased,  
19 or that, if added, it or any part thereof will be refunded. The  
20 provisions of this subdivision shall not apply to a public utility.

21 (c) The tax required to be collected by the retailer from  
22 the purchaser, unless otherwise provided by statute or by rule and  
23 regulation of the Tax Commissioner, shall be displayed separately  
24 from the list price, the price advertised in the premises, the  
25 marked price, or other price on the sales check or other proof of  
26 sales, rentals, or leases.

27 (d) For the purpose of more efficiently securing the  
28 payment, collection, and accounting for the sales tax and for the

1 convenience of the retailer in collecting the sales tax, it shall  
2 be the duty of the Tax Commissioner to ~~adopt and promulgate~~  
3 ~~appropriate rules and regulations prescribing~~ provide a schedule or  
4 schedules of the amounts to be collected from the consumer or user  
5 to effectuate the computation and collection of the tax imposed by  
6 the Nebraska Revenue Act of 1967. Such schedule or schedules shall  
7 provide that the tax shall be collected from the consumer or user  
8 uniformly on sales according to brackets based on sales prices of  
9 the item or items. Retailers may compute the tax due on any  
10 transaction on an item or an invoice basis. The rounding rule  
11 provided in section 77-3,117 applies. ~~except that the Tax~~  
12 ~~Commissioner may authorize computation and collection of the tax~~  
13 ~~uniformly on a straight percentage basis in lieu of brackets in~~  
14 ~~situations involving machine or computer billing.~~

15 (e) The use of tokens or stamps for the purpose of  
16 collecting or enforcing the collection of the taxes imposed in the  
17 Nebraska Revenue Act of 1967 or for any other purpose in connection  
18 with such taxes is prohibited.

19 (f) For the purpose of the proper administration of the  
20 provisions of the Nebraska Revenue Act of 1967 and to prevent  
21 evasion of the retail sales tax, it shall be presumed that all  
22 gross receipts are subject to the tax until the contrary is  
23 established. The burden of proving that a sale of property is not  
24 a sale at retail is upon the person who makes the sale unless he or  
25 she takes, in good faith, from the purchaser (i) a resale  
26 certificate to the effect that the property is purchased for the  
27 purpose of reselling, leasing, or renting it, (ii) an exemption  
28 certificate pursuant to subsection (7) of section 77-2705, or (iii)

1 a direct payment permit pursuant to sections 77-2705.01 to  
2 77-2705.03. Receipt of a resale certificate, exemption  
3 certificate, or direct payment permit, taken in good faith, shall  
4 be conclusive proof for the seller that the sale was made for  
5 resale or was exempt or that the tax will be paid directly to the  
6 state.

7 (g) In the rental or lease of automobiles, trucks,  
8 trailers, semitrailers, and truck-tractors as defined in section  
9 60-301, the tax shall be collected by the lessor on the rental or  
10 lease price. ~~except as otherwise provided within this section.~~

11 ~~(i) From all vehicles registered for operation upon the~~  
12 ~~highways of this state which are rented or leased for periods of~~  
13 ~~one year or more, or~~

14 ~~(ii) From all vehicles delivered by the lessor within~~  
15 ~~this state which are rented or leased for periods of less than one~~  
16 ~~year.~~

17 (h) In the rental or lease of automobiles, trucks,  
18 trailers, semitrailers, and truck-tractors as defined in section  
19 60-301, for periods of one year or more, the lessor may elect not  
20 to collect and remit the sales tax on the gross receipts and  
21 instead pay a sales tax on the cost of such vehicle. If such  
22 election is made, it shall be made pursuant to the following  
23 conditions:

24 (i) Notice of the desire to make such election shall be  
25 filed with the Tax Commissioner and shall not become effective  
26 until the Tax Commissioner is satisfied that the taxpayer has  
27 complied with all conditions of this subsection and all rules and  
28 regulations of the Tax Commissioner;

1           (ii) Such election when made shall continue in force and  
2 effect for a period of not less than two years and thereafter until  
3 such time as the lessor elects to terminate the election;

4           (iii) When such election is made, it shall apply to all  
5 vehicles of the lessor rented or leased for periods of one year or  
6 more except vehicles to be leased to common or contract carriers  
7 who provide to the lessor a valid common or contract carrier  
8 exemption certificate. If the lessor rents or leases other  
9 vehicles for periods of less than one year, such lessor shall  
10 maintain his or her books and records and his or her accounting  
11 procedure as the Tax Commissioner prescribes; and

12           (iv) The Tax Commissioner by rule and regulation shall  
13 prescribe the contents and form of the notice of election, a  
14 procedure for the determination of the tax base of vehicles which  
15 are under an existing lease at the time such election becomes  
16 effective, the method and manner for terminating such election, and  
17 such other rules and regulations as may be necessary for the proper  
18 administration of this subdivision.

19           (i) The tax imposed by this section on the sales of motor  
20 vehicles, trailers, and semitrailers as defined in section 60-301  
21 shall be the liability of the purchaser and, with the exception of  
22 motor vehicles, trailers, and semitrailers registered pursuant to  
23 section 60-305.09, the tax shall be collected by the county  
24 treasurer or designated county official as provided in section  
25 60-302 at the time the purchaser makes application for the  
26 registration of the motor vehicle, trailer, or semitrailer for  
27 operation upon the highways of this state. The tax imposed by this  
28 section on motor vehicles, trailers, and semitrailers registered



1 pursuant to section 60-305.09 shall be collected by the Department  
2 of Motor Vehicles at the time the purchaser makes application for  
3 the registration of the motor vehicle, trailer, or semitrailer for  
4 operation upon the highways of this state. At the time of the sale  
5 of any motor vehicle, trailer, or semitrailer, the seller shall (i)  
6 state on the sales invoice the dollar amount of the tax imposed  
7 under this section and (ii) furnish to the purchaser a certified  
8 statement of the transaction, in such form as the Tax Commissioner  
9 prescribes, setting forth as a minimum the total sales price, the  
10 allowance for any trade-in, and the difference between the two.  
11 The sales tax due shall be computed on the difference between the  
12 total sales price and the allowance for any trade-in as disclosed  
13 by such certified statement. Any seller who willfully understates  
14 the amount upon which the sales tax is due shall be subject to a  
15 penalty of one thousand dollars. A copy of such certified  
16 statement shall also be furnished to the Tax Commissioner. Any  
17 seller who fails or refuses to furnish such certified statement  
18 shall be guilty of a misdemeanor and shall, upon conviction  
19 thereof, be punished by a fine of not less than twenty-five dollars  
20 nor more than one hundred dollars. If the seller fails to state on  
21 the sales invoice the dollar amount of the tax due, the purchaser  
22 shall have the right and authority to rescind any agreement for  
23 purchase and to declare the purchase null and void. If the  
24 purchaser retains such motor vehicle, trailer, or semitrailer in  
25 this state and does not register it for operation on the highways  
26 of this state within thirty days of the purchase thereof, the tax  
27 imposed by this section shall immediately thereafter be paid by the  
28 purchaser to the county treasurer, the designated county official,

1 or the Department of Motor Vehicles. If the tax is not paid on or  
2 before the thirtieth day after its purchase, the county treasurer,  
3 designated county official, or Department of Motor Vehicles shall  
4 also collect from the purchaser interest from the thirtieth day  
5 through the date of payment and sales tax penalties as provided in  
6 the Nebraska Revenue Act of 1967. The county treasurer, designated  
7 county official, or Department of Motor Vehicles shall report and  
8 remit the tax so collected to the Tax Commissioner by the fifteenth  
9 day of the following month. The county treasurer or designated  
10 county official shall deduct and withhold for the use of the county  
11 general fund, from all amounts required to be collected under this  
12 subsection, the collection fee permitted to be deducted by any  
13 retailer collecting the sales tax. The Department of Motor  
14 Vehicles shall deduct, withhold, and deposit in the Motor Carrier  
15 Division Cash Fund the collection fee permitted to be deducted by  
16 any retailer collecting the sales tax. The collection fee shall be  
17 forfeited if the county treasurer, designated county official, or  
18 Department of Motor Vehicles violates any rule or regulation  
19 pertaining to the collection of the use tax.

20 (j)(i) The tax imposed by this section on the sale of a  
21 motorboat as defined in section 37-1204 shall be the liability of  
22 the purchaser. The tax shall be collected by the county treasurer  
23 or designated county official at the time the purchaser makes  
24 application for the registration of the motorboat. At the time of  
25 the sale of a motorboat, the seller shall (A) state on the sales  
26 invoice the dollar amount of the tax imposed under this section and  
27 (B) furnish to the purchaser a certified statement of the  
28 transaction, in such form as the Tax Commissioner prescribes,

1 setting forth as a minimum the total sales price, the allowance for  
2 any trade-in, and the difference between the two. The sales tax  
3 due shall be computed on the difference between the total sales  
4 price and the allowance for any trade-in as disclosed by such  
5 certified statement. Any seller who willfully understates the  
6 amount upon which the sales tax is due shall be subject to a  
7 penalty of one thousand dollars. A copy of such certified  
8 statement shall also be furnished to the Tax Commissioner. Any  
9 seller who fails or refuses to furnish such certified statement  
10 shall be guilty of a misdemeanor and shall, upon conviction  
11 thereof, be punished by a fine of not less than twenty-five dollars  
12 nor more than one hundred dollars. If the seller fails to state on  
13 the sales invoice the dollar amount of the tax due, the purchaser  
14 shall have the right and authority to rescind any agreement for  
15 purchase and to declare the purchase null and void. If the  
16 purchaser retains such motorboat in this state and does not  
17 register it within thirty days of the purchase thereof, the tax  
18 imposed by this section shall immediately thereafter be paid by the  
19 purchaser to the county treasurer or designated county official.  
20 If the tax is not paid on or before the thirtieth day after its  
21 purchase, the county treasurer or designated county official shall  
22 also collect from the purchaser interest from the thirtieth day  
23 through the date of payment and sales tax penalties as provided in  
24 the Nebraska Revenue Act of 1967. The county treasurer or  
25 designated county official shall report and remit the tax so  
26 collected to the Tax Commissioner by the fifteenth day of the  
27 following month. The county treasurer or designated county  
28 official shall deduct and withhold for the use of the county

1 general fund, from all amounts required to be collected under this  
2 subsection, the collection fee permitted to be deducted by any  
3 retailer collecting the sales tax. The collection fee shall be  
4 forfeited if the county treasurer or designated county official  
5 violates any rule or regulation pertaining to the collection of the  
6 use tax.

7 (ii) In the rental or lease of motorboats, the tax shall  
8 be collected by the lessor on the rental or lease price. ~~7 except~~  
9 ~~as otherwise provided within this section.~~

10 ~~(A) From all motorboats registered for operation within~~  
11 ~~this state which are rented or leased for periods of one year or~~  
12 ~~more, or~~

13 ~~(B) From all motorboats delivered by the lessor within~~  
14 ~~this state which are rented or leased for periods of less than one~~  
15 ~~year.~~

16 ~~(iii) Subdivisions (1)(j)(i) and (ii) of this section~~  
17 ~~become operative January 1, 1997.~~

18 (k) The Tax Commissioner shall adopt and promulgate  
19 necessary rules and regulations for determining the amount subject  
20 to the taxes imposed by this section so as to insure that the full  
21 amount of any applicable tax is paid in cases in which a sale is  
22 made of which a part is subject to the taxes imposed by this  
23 section and a part of which is not so subject and a separate  
24 accounting is not practical or economical.

25 (2) A use tax is hereby imposed on the storage, use, or  
26 other consumption in this state of property purchased, leased, or  
27 rented from any retailer and on any transaction the gross receipts  
28 of which are subject to tax under subsection (1) of this section on

1 or after June 1, 1967, for storage, use, or other consumption in  
2 this state at the rate set as provided in subsection (1) of this  
3 section on the sales price of the property or, in the case of  
4 leases or rentals, of the lease or rental prices.

5 (a) Every person storing, using, or otherwise consuming  
6 in this state property purchased from a retailer or leased or  
7 rented from another person for such purpose shall be liable for the  
8 use tax at the rate in effect when his or her liability for the use  
9 tax becomes certain under the accounting basis used to maintain his  
10 or her books and records. His or her liability shall not be  
11 extinguished until the use tax has been paid to this state, except  
12 that a receipt from a retailer engaged in business in this state or  
13 from a retailer who is authorized by the Tax Commissioner, under  
14 such rules and regulations as he or she may prescribe, to collect  
15 the sales tax and who is, for the purposes of the Nebraska Revenue  
16 Act of 1967 relating to the sales tax, regarded as a retailer  
17 engaged in business in this state, which receipt is given to the  
18 purchaser pursuant to subdivision (b) of this subsection, shall be  
19 sufficient to relieve the purchaser from further liability for the  
20 tax to which the receipt refers.

21 (b) Every retailer engaged in business in this state and  
22 selling, leasing, or renting property for storage, use, or other  
23 consumption in this state shall, at the time of making any sale,  
24 collect any tax which may be due from the purchaser and shall give  
25 to the purchaser, upon request, a receipt therefor in the manner  
26 and form prescribed by the Tax Commissioner.

27 (c) The Tax Commissioner, in order to facilitate the  
28 proper administration of the use tax, may designate such person or

1 persons as he or she may deem necessary to be use tax collectors  
2 and delegate to such persons such authority as is necessary to  
3 collect any use tax which is due and payable to the State of  
4 Nebraska. The Tax Commissioner may require of all persons so  
5 designated a surety bond in favor of the State of Nebraska to  
6 insure against any misappropriation of state funds so collected.  
7 The Tax Commissioner may require any tax official, city, county, or  
8 state, to collect the use tax on behalf of the state. All persons  
9 designated to or required to collect the use tax shall account for  
10 such collections in the manner prescribed by the Tax Commissioner.  
11 Nothing in this subdivision shall be so construed as to prevent the  
12 Tax Commissioner or his or her employees from collecting any use  
13 taxes due and payable to the State of Nebraska.

14 (d) All persons designated to collect the use tax and all  
15 persons required to collect the use tax shall forward the total of  
16 such collections to the Tax Commissioner at such time and in such  
17 manner as the Tax Commissioner may prescribe. For all use taxes  
18 collected prior to October 1, 2002, such collectors of the use tax  
19 shall deduct and withhold from the amount of taxes collected two  
20 and one-half percent of the first three thousand dollars remitted  
21 each month and one-half of one percent of all amounts in excess of  
22 three thousand dollars remitted each month as reimbursement for the  
23 cost of collecting the tax. For use taxes collected on and after  
24 October 1, 2002, such collectors of the use tax shall deduct and  
25 withhold from the amount of taxes collected two and one-half  
26 percent of the first three thousand dollars remitted each month as  
27 reimbursement for the cost of collecting the tax. Any such  
28 deduction shall be forfeited to the State of Nebraska if such

1 collector violates any rule, regulation, or directive of the Tax  
2 Commissioner.

3 (e) For the purpose of the proper administration of the  
4 Nebraska Revenue Act of 1967 and to prevent evasion of the use tax,  
5 it shall be presumed that property sold, leased, or rented by any  
6 person for delivery in this state is sold, leased, or rented for  
7 storage, use, or other consumption in this state until the contrary  
8 is established. The burden of proving the contrary is upon the  
9 person who purchases, leases, or rents the property.

10 (f) For the purpose of the proper administration of the  
11 Nebraska Revenue Act of 1967 and to prevent evasion of the use tax,  
12 for the sale of property to an advertising agency which purchases  
13 the property as an agent for a disclosed or undisclosed principal,  
14 the advertising agency is and remains liable for the sales and use  
15 tax on the purchase the same as if the principal had made the  
16 purchase directly. It shall be further presumed, in the absence of  
17 evidence to the contrary, that property shipped or brought to this  
18 state by the purchaser after June 1, 1967, was purchased from a  
19 retailer on or after that date for storage, use, or other  
20 consumption in this state.

21 ~~(g)(i) Except as provided in subdivisions (g)(ii) through~~  
22 ~~(g)(v) of this subsection, when a person purchases property in~~  
23 ~~another state, the Commonwealth of Puerto Rico, any territory or~~  
24 ~~possession of the United States, or any foreign country with the~~  
25 ~~intent of using such property in such other state, commonwealth,~~  
26 ~~territory, possession, or country and such property is actually~~  
27 ~~used in the other state, commonwealth, territory, possession, or~~  
28 ~~country for its intended purpose, the property shall not be subject~~

1 to tax in this state.

2           (ii) Subdivision (g)(i) of this subsection shall only  
3 apply to a motor vehicle, trailer, or semitrailer as defined in  
4 section 60-301 when it is licensed for operation on the highways of  
5 the other state, commonwealth, territory, possession, or country  
6 prior to being brought into this state. Licensed for operation on  
7 the highways does not include any temporary registration,  
8 licensing, or in transit procedure that allows nonresidents to  
9 operate the motor vehicle, trailer, or semitrailer on the highways  
10 of the other state, commonwealth, territory, possession, or country  
11 for a limited time with the intent to remove the motor vehicle from  
12 the other state, commonwealth, territory, possession, or country.

13           (iii) Subdivision (g)(i) of this subsection shall not  
14 apply to an aircraft which is brought into this state within one  
15 year of purchase and (A) is regularly based within this state or  
16 (B) more than one-half of the aircraft's operating hours are within  
17 this state.

18           For purposes of subdivision (g)(iii) of this subsection,  
19 operation of the aircraft for the purpose of maintenance, repair,  
20 or fabrication with subsequent removal from this state upon  
21 completion of such maintenance, repair, or fabrication shall not be  
22 considered operating hours.

23           (iv)(A) Subdivision (g)(i) of this subsection shall only  
24 apply to a motorboat as defined in section 37-1204 when it is  
25 registered for operation in the other state, commonwealth,  
26 territory, possession, or country prior to being brought into this  
27 state.

28           (B) Subdivision (g)(iv)(A) of this subsection becomes



1 ~~operative January 1, 1997.~~

2 ~~(v) Subdivision (g)(i) of this subsection shall not apply~~  
3 ~~to any property that is manufactured, processed, or fabricated in~~  
4 ~~another state and that is not used for its intended purpose in the~~  
5 ~~other state after its manufacture, processing, or fabrication.~~

6 Sec. 49. (1) The determination of whether a sale or use  
7 of property or the provision of services is in this state, in a  
8 municipality that has adopted a tax under the Local Option Revenue  
9 Act, or in a county that has adopted a tax under section 13-319  
10 shall be governed by the sourcing rules in sections 49 to 52 of  
11 this act.

12 (2) When the property is received by the purchaser at a  
13 business location of the retailer, the sale is sourced to that  
14 business location.

15 (3) When the property is not received by the purchaser at  
16 a business location of the retailer, the sale is sourced to the  
17 location where receipt by the purchaser or the purchaser's donee,  
18 designated as such by the purchaser, occurs, including the location  
19 indicated by instructions for delivery to the purchaser or donee,  
20 known to the retailer.

21 (4) When subsection (2) or (3) of this section does not  
22 apply, the sale is sourced to the location indicated by an address  
23 or other information for the purchaser that is available from the  
24 business records of the retailer that are maintained in the  
25 ordinary course of the retailer's business when use of this address  
26 does not constitute bad faith.

27 (5) When subsection (2), (3), or (4) of this section does  
28 not apply, the sale is sourced to the location indicated by an

1 address for the purchaser obtained during the consummation of the  
2 sale, including the address of a purchaser's payment instrument, if  
3 no other address is available, when use of this address does not  
4 constitute bad faith.

5 (6) When subsection (2), (3), (4), or (5) of this section  
6 does not apply, including the circumstance in which the retailer is  
7 without sufficient information to apply the rules in any such  
8 subsection, then the location will be determined by the address  
9 from which property was shipped, from which the digital good was  
10 first available for transmission by the retailer, or from which the  
11 service was provided disregarding for these purposes any location  
12 that merely provided the digital transfer of the product sold.

13 (7) The lease or rental of tangible personal property,  
14 other than property identified in subsection (8) or (9) of this  
15 section, shall be sourced as follows:

16 (a) For a lease or rental that requires recurring  
17 periodic payments, the first periodic payment is sourced the same  
18 as a retail sale in accordance with the provisions of subsection  
19 (2) of this section. Periodic payments made subsequent to the  
20 first payment are sourced to the primary property location for each  
21 period covered by the payment. The primary property location shall  
22 be as indicated by an address for the property provided by the  
23 lessee that is available to the lessor from its records maintained  
24 in the ordinary course of business when use of this address does  
25 not constitute bad faith. The property location shall not be  
26 altered by intermittent use at different locations, such as use of  
27 business property that accompanies employees on business trips and  
28 service calls; and

1           (b) For a lease or rental that does not require recurring  
2 periodic payments, the payment is sourced the same as a retail sale  
3 in accordance with the provisions of subsection (2) of this  
4 section.

5           This subsection does not affect the imposition or  
6 computation of sales or use tax on leases or rentals based on a  
7 lump-sum or accelerated basis or on the acquisition of property for  
8 lease.

9           (8) The lease or rental of motor vehicles, trailers,  
10 semitrailers, or aircraft that do not qualify as transportation  
11 equipment under subsection (9) of this section shall be sourced as  
12 follows:

13           (a) For a lease or rental that requires recurring  
14 periodic payments, each periodic payment is sourced to the primary  
15 property location. The primary property location shall be as  
16 indicated by an address for the property provided by the lessee  
17 that is available to the lessor from its records maintained in the  
18 ordinary course of business, when use of this address does not  
19 constitute bad faith. This location shall not be altered by  
20 intermittent use at different locations; and

21           (b) For a lease or rental that does not require recurring  
22 periodic payments, the payment is sourced the same as a retail sale  
23 in accordance with the provisions of subsection (2) of this  
24 section.

25           This subsection does not affect the imposition or  
26 computation of sales or use tax on leases or rentals based on a  
27 lump-sum or accelerated basis or on the acquisition of property for  
28 lease.

1           (9) The retail sale, including lease or rental, of  
2           transportation equipment shall be sourced the same as a retail sale  
3           in accordance with subsection (2) of this section notwithstanding  
4           the exclusion of lease or rental in subsection (2) of this section.

5           Transportation equipment means any of the following:

6                   (a) Locomotives and railcars that are utilized for the  
7                   carriage of persons or property in interstate commerce;

8                   (b) Trucks and truck-tractors with a gross vehicle weight  
9                   rating of 10,001 pounds or greater, trailers, semitrailers, or  
10                  passenger buses that are: (i) Registered through the International  
11                  Registration Plan; and (ii) operated under authority of a carrier  
12                  authorized and certificated by the United States Department of  
13                  Transportation or another federal authority to engage in the  
14                  carriage of persons or property in interstate commerce;

15                  (c) Aircraft operated by air carriers authorized and  
16                  certificated by the United States Department of Transportation or  
17                  another federal or a foreign authority to engage in the carriage of  
18                  persons or property in interstate or foreign commerce; and

19                  (d) Containers designed for use on and component parts  
20                  attached or secured on the items set forth in subdivisions (9)(a)  
21                  through (c) of this section.

22           (10) The provision of services shall be sourced to this  
23           state for services provided to real estate if the real estate is  
24           located in this state, for services provided to personal property  
25           if the personal property is located in this state and the service  
26           is rendered for use in this state, and for computer software  
27           training under subdivision (4)(c) of section 20 of this act if the  
28           training is performed at a location that is within this state for a

1 customer located within this state.

2 (11) For purposes of this section, receive and receipt  
3 mean taking possession of tangible personal property, making first  
4 use of services, or taking possession or making first use of  
5 digital goods, whichever comes first. The terms receive and  
6 receipt do not include possession by a shipping company on behalf  
7 of the purchaser.

8 (12) The sales not including lease or rental of motor  
9 vehicles, trailers, and semitrailers as defined in section 60-301  
10 shall be sourced to the place of registration of the motor vehicle,  
11 trailer, or semitrailer for operation upon the highways of this  
12 state.

13 (13) The sale or lease for one year or more of motorboats  
14 shall be sourced to the place of registration of the motorboat.  
15 The lease of motorboats for less than one year shall be sourced to  
16 the point of delivery.

17 Sec. 50. (1) Notwithstanding section 49 of this act, a  
18 business purchaser that is not a holder of a direct pay permit that  
19 knows at the time of its purchase of a digital good or a service  
20 that the digital good or service will be concurrently available for  
21 use in more than one jurisdiction shall deliver to the retailer in  
22 conjunction with its purchase a multiple points of use exemption  
23 form disclosing this fact.

24 (2) Upon receipt of the exemption form, the retailer is  
25 relieved of all obligation to collect, pay, or remit the applicable  
26 tax and the purchaser shall be obligated to collect, pay, or remit  
27 the applicable tax on a direct pay basis.

28 (3) A purchaser delivering the exemption form may use any

1 reasonable, but consistent and uniform, method of apportionment  
2 that is supported by the purchaser's business records as they exist  
3 at the time of the consummation of the sale.

4 (4) The exemption form will remain in effect for all  
5 future sales by the seller to the purchaser except as to the  
6 subsequent sale's specific apportionment that is governed by the  
7 principle of subsection (3) of this section and the facts existing  
8 at the time of the sale until it is revoked in writing.

9 (5) A holder of a direct-pay permit shall not be required  
10 to deliver an exemption form to the seller. A direct-pay  
11 permitholder shall follow the provisions of subsection (3) of this  
12 section in apportioning the tax due on a digital good or a service  
13 that will be concurrently available for use in more than one  
14 jurisdiction.

15 Sec. 51. (1) Notwithstanding section 49 of this act, a  
16 purchaser of direct mail that is not a holder of a direct-pay  
17 permit shall provide to the seller in conjunction with the purchase  
18 either a direct mail form or information to show the jurisdictions  
19 to which the direct mail is delivered to recipients.

20 (2) Upon receipt of the direct mail form, the seller is  
21 relieved of all obligations to collect, pay, or remit the  
22 applicable tax and the purchaser is obligated to pay or remit the  
23 applicable tax on a direct pay basis. A direct mail form shall  
24 remain in effect for all future sales of direct mail by the seller  
25 to the purchaser until it is revoked in writing.

26 (3) Upon receipt of information from the purchaser  
27 showing the jurisdictions to which the direct mail is delivered to  
28 recipients, the seller shall collect the tax according to the

1 delivery information provided by the purchaser. In the absence of  
2 bad faith, the seller is relieved of any further obligation to  
3 collect tax on any transaction where the seller has collected tax  
4 pursuant to the delivery information provided by the purchaser.

5 (4) If the purchaser of direct mail does not have a  
6 direct-pay permit and does not provide the seller with either a  
7 direct mail form or delivery information as required by subsection  
8 (1) of this section, the seller shall collect the tax according to  
9 subsection (6) of section 49 of this act. Nothing in this  
10 subsection shall limit a purchaser's obligation for sales or use  
11 tax to any state to which the direct mail is delivered.

12 (5) If a purchaser of direct mail provides the seller  
13 with documentation of direct-pay authority, the purchaser shall not  
14 be required to provide a direct mail form or delivery information  
15 to the seller.

16 Sec. 52. (1) Except for the telecommunication services  
17 defined in subsection (3) of this section, the sale of  
18 telecommunication service sold on a call-by-call basis shall be  
19 sourced to (a) each level of taxing jurisdiction where the call  
20 originates and terminates in that jurisdiction or (b) each level of  
21 taxing jurisdiction where the call either originates or terminates  
22 and in which the service address is also located.

23 (2) Except for the telecommunication services defined in  
24 subsection (3) of this section, a sale of telecommunications  
25 services sold on a basis other than a call-by-call basis, is  
26 sourced to the customer's place of primary use.

27 (3) (a) For mobile telecommunications service provided and  
28 billed to a customer by a home service provider:

1           (i) Notwithstanding any other provision of law or any  
2 local ordinance or resolution, such mobile telecommunications  
3 service is deemed to be provided by the customer's home service  
4 provider;

5           (ii) All taxable charges for such mobile  
6 telecommunications service shall be subject to tax by the state or  
7 other taxing jurisdiction in this state whose territorial limits  
8 encompass the customer's place of primary use regardless of where  
9 the mobile telecommunications service originates, terminates, or  
10 passes through; and

11           (iii) No taxes, charges, or fees may be imposed on a  
12 customer with a place of primary use outside this state.

13           (b) In accordance with the federal Mobile  
14 Telecommunications Sourcing Act, as such act existed on July 20,  
15 2002, the Tax Commissioner may, but is not required to:

16           (i) Provide or contract for a tax assignment data base  
17 based upon standards identified in 4 U.S.C. 119, as such section  
18 existed on July 20, 2002, with the following conditions:

19           (A) If such data base is provided, a home service  
20 provider shall be held harmless for any tax that otherwise would  
21 result from any errors or omissions attributable to reliance on  
22 such data base; or

23           (B) If such data base is not provided, a home service  
24 provider may rely on an enhanced zip code for identifying the  
25 proper taxing jurisdictions and shall be held harmless for any tax  
26 that otherwise would result from any errors or omissions  
27 attributable to reliance on such enhanced zip code if the home  
28 service provider identified the taxing jurisdiction through the



1 exercise of due diligence and complied with any procedures that may  
2 be adopted by the Tax Commissioner. Any such procedure shall be in  
3 accordance with 4 U.S.C. 120, as such section existed on July 20,  
4 2002; and

5 (ii) Adopt procedures for correcting errors in the  
6 assignment of primary use that are consistent with 4 U.S.C. 121, as  
7 such section existed on July 20, 2002.

8 (c) If charges for mobile telecommunications service that  
9 are not subject to tax are aggregated with and not separately  
10 stated on the bill from charges that are subject to tax, the total  
11 charge to the customer shall be subject to taxation unless the home  
12 service provider can reasonably separate charges not subject to  
13 taxation using the records of the home service provider that are  
14 kept in the regular course of business.

15 (d) For purposes of this subsection:

16 (i) Customer means an individual, business, organization,  
17 or other person contracting to receive mobile telecommunications  
18 service from a home service provider. Customer does not include a  
19 reseller of mobile telecommunications service or a serving carrier  
20 under an arrangement to serve the customer outside the home service  
21 provider's service area;

22 (ii) Home service provider means a telecommunications  
23 company as defined in section 86-322 that has contracted with a  
24 customer to provide mobile telecommunications service;

25 (iii) Mobile telecommunications service means a wireless  
26 communication service carried on between mobile stations or  
27 receivers and land stations, and by mobile stations communicating  
28 among themselves, and includes: (i) Both one-way and two-way

1 wireless communications services; (ii) a mobile service which  
2 provides a regularly interacting group of base, mobile, portable,  
3 and associated control and relay stations, whether on an  
4 individual, cooperative, or multiple basis for private one-way or  
5 two-way land mobile radio communications by eligible users over  
6 designated areas of operation; and (iii) any personal  
7 communications service;

8 (iv) Place of primary use means the street address  
9 representative of where the customer's use of mobile  
10 telecommunications service primarily occurs. The place of primary  
11 use shall be the residential street address or the primary business  
12 street address of the customer and shall be within the service area  
13 of the home service provider; and

14 (v) Tax means the sales taxes levied under sections  
15 13-319, 77-2703, and 77-27,142, the surcharges levied under the  
16 Enhanced Wireless 911 Services Act, the Nebraska Telecommunications  
17 Universal Service Fund Act, and the Telecommunications Relay System  
18 Act, and any other tax levied against the customer based on the  
19 amount charged to the customer. Tax does not mean an income tax,  
20 property tax, franchise tax, or any other tax levied on the home  
21 service provider that is not based on the amount charged to the  
22 customer.

23 (4) A sale of post-paid calling service is sourced to the  
24 origination point of the telecommunications signal as first  
25 identified by either (a) the seller's telecommunications system, or  
26 (b) information received by the seller from its service provider,  
27 where the system used to transport such signals is not that of the  
28 seller.

1           (5) A sale of prepaid calling service is sourced in  
2 accordance with section 49 of this act, except that, in the case of  
3 a sale of mobile telecommunications service that is a prepaid  
4 telecommunications service, the rule provided in section 49 of this  
5 act shall include as an option the location associated with the  
6 mobile telephone number.

7           (6) A sale of a private communication service is sourced  
8 as follows:

9           (a) Service for a separate charge related to a customer  
10 channel termination point is sourced to each level of jurisdiction  
11 in which such customer channel termination point is located;

12           (b) Service where all customer termination points are  
13 located entirely within one jurisdiction or levels of jurisdiction  
14 is sourced in such jurisdiction in which the customer channel  
15 termination points are located;

16           (c) Service for segments of a channel between two  
17 customer channel termination points located in different  
18 jurisdictions and which segment of channel are separately charged  
19 is sourced fifty percent in each level of jurisdiction in which the  
20 customer channel termination points are located; and

21           (d) Service for segments of a channel located in more  
22 than one jurisdiction or levels of jurisdiction and which segments  
23 are not separately billed is sourced in each jurisdiction based on  
24 the percentage determined by dividing the number of customer  
25 channel termination points in such jurisdiction by the total number  
26 of customer channel termination points.

27           (7) For the purposes of this section:

28           (a) Air-to-ground radiotelephone service means a radio

1 service, as that term is defined in 47 C.F.R. 22.99, as such  
2 regulation existed on January 1, 2003, in which common carriers are  
3 authorized to offer and provide radio telecommunications service  
4 for hire to subscribers in aircraft;

5 (b) Call-by-call basis means any method of charging for  
6 telecommunications services where the price is measured by  
7 individual calls;

8 (c) Communications channel means a physical or virtual  
9 path of communications over which signals are transmitted between  
10 or among customer channel termination points;

11 (d) Customer means the person or entity that contracts  
12 with the seller of telecommunications services. If the end user of  
13 telecommunications services is not the contracting party, the end  
14 user of the telecommunications service is the customer of the  
15 telecommunications service, but this sentence only applies for the  
16 purpose of sourcing sales of telecommunications services under this  
17 section. Customer does not include a reseller of  
18 telecommunications service or for mobile telecommunications service  
19 of a serving carrier under an agreement to serve the customer  
20 outside the home service provider's licensed service area;

21 (e) Customer channel termination point means the location  
22 where the customer either inputs or receives the communications;

23 (f) End user means the person who utilizes the  
24 telecommunications service. In the case of an entity, end user  
25 means the individual who utilizes the service on behalf of the  
26 entity;

27 (g) Post-paid calling service means the  
28 telecommunications service obtained by making a payment on a

1 call-by-call basis either through the use of a credit card or  
2 payment mechanism such as a bank card, travel card, credit card, or  
3 debit card, or by a charge made to which a telephone number which  
4 is not associated with the origination or termination of the  
5 telecommunications service. A post-paid calling service includes a  
6 telecommunications service that would be a prepaid calling service  
7 except it is not exclusively a telecommunications service;

8 (h) Prepaid calling service means the right to access  
9 exclusively telecommunications services, which is paid for in  
10 advance and which enables the origination of calls using an access  
11 number or authorization code, whether manually or electronically  
12 dialed, and that is sold in predetermined units or dollars of which  
13 the number declines with use in a known amount;

14 (i) Private communication service means a  
15 telecommunications service that entitles the customer to exclusive  
16 or priority use of a communications channel or group of channels  
17 between or among termination points, regardless of the manner in  
18 which such channel or channels are connected, and includes  
19 switching capacity, extension lines, stations, and any other  
20 associated services that are provided in connection with the use of  
21 such channel or channels; and

22 (j) Service address means the location of the  
23 telecommunications equipment to which a customer's call is charged  
24 and from which the call originates or terminates, regardless of  
25 where the call is billed or paid. If this location is not known,  
26 service address means the origination point of the signal of the  
27 telecommunications services first identified by either the seller's  
28 telecommunications system or in information received by the seller

1 from its service provider, where the system used to transport such  
2 signals is not that of the seller. If neither location is not  
3 known, the service address means the location of the customer's  
4 place of primary use.

5 Sec. 53. Section 77-2704.09, Revised Statutes  
6 Supplement, 2002, is amended to read:

7 77-2704.09. (1) Sales and use taxes shall not be imposed  
8 on the gross receipts from the sale, lease, or rental of and the  
9 storage, use, or other consumption in this state of insulin and the  
10 following when sold for a patient's use under a prescription  
11 ~~written by a person licensed under Chapter 71, article 1, or~~  
12 ~~sections 71-4701 to 71-4719. Prescription medicines~~ and which are  
13 of the type eligible for coverage under the medical assistance  
14 program established pursuant to sections 68-1018 to 68-1025:  
15 Drugs, not including over-the-counter drugs; durable medical  
16 equipment; home medical supplies; prosthetic devices; ~~orthotic~~  
17 ~~devices;~~ oxygen; oxygen equipment; and mobility enhancing  
18 equipment.

19 (2) For purposes of this section:

20 (a) Drug means a compound, substance, preparation, and  
21 component of a compound, substance, or preparation, other than food  
22 and food ingredients, dietary supplements, or alcoholic beverages:

23 (i) Recognized in the official United States  
24 Pharmacopeia, official Homeopathic Pharmacopeia of the United  
25 States, or official National Formulary, and supplement to any of  
26 them;

27 (ii) Intended for use in the diagnosis, cure, mitigation,  
28 treatment, or prevention of disease; or

1            (iii) Intended to affect the structure or any function of  
2   the body;

3            (b) Durable medical equipment means equipment which can  
4   withstand repeated use, is primarily and customarily used to serve  
5   a medical purpose, generally is not useful to a person in the  
6   absence of illness or injury, and is appropriate for use in the  
7   home, and is not worn in or on the body. Durable medical equipment  
8   includes repair and replacement parts for such equipment;

9            (c) ~~(b)~~ Home medical supplies means supplies primarily  
10   and customarily used to serve a medical purpose which are  
11   appropriate for use in the home and are generally not useful to a  
12   person in the absence of illness or injury;

13           (d) ~~(c)~~ Mobility enhancing equipment means equipment  
14   which is primarily and customarily used to provide or increase the  
15   ability to move from one place to another ~~for a person required to~~  
16   ~~use durable medical equipment~~ which is not generally used by  
17   persons with normal mobility, orthotics, or prosthetics for  
18   locomotion and which is appropriate for use either in a home or a  
19   motor vehicle. Mobility enhancing equipment includes repair and  
20   replacement parts for such equipment. Mobility enhancing equipment  
21   does not include any motor vehicle or equipment on a motor vehicle  
22   normally provided by a motor vehicle manufacturer;

23           ~~(d) Orthotic devices means devices which are used to~~  
24   ~~support, or limit the movement of, parts of the body to serve a~~  
25   ~~medical purpose and generally are not useful to a person in the~~  
26   ~~absence of illness or injury;~~

27           (e) Over-the-counter-drug means a drug that contains a  
28   label that identifies the product as a drug as required by 21

1 C.F.R. 201.66, as such regulation existed on January 1, 2003. The  
2 over-the-counter drug label includes a drug facts panel or a  
3 statement of the active ingredients with a list of those  
4 ingredients contained in the compound, substance, or preparation;

5 (f) Oxygen equipment means oxygen cylinders, cylinder  
6 transport devices including sheaths and carts, cylinder studs and  
7 support devices, regulators, flowmeters, tank wrenches, oxygen  
8 concentrators, liquid oxygen base dispensers, liquid oxygen  
9 portable dispensers, oxygen tubing, nasal cannulas, face masks,  
10 oxygen humidifiers, and oxygen fittings and accessories;

11 (g) Prescription means an order, formula, or recipe  
12 issued in any form of oral, written, electronic, or other means of  
13 transmission by a duly licensed practitioner authorized under the  
14 Advanced Practice Registered Nurse Act, Chapter 71, article 1, or  
15 sections 71-4701 to 71-4719; and

16 (h) Prosthetic devices means a replacement, corrective,  
17 or supportive device worn on or in the body to artificially replace  
18 a missing portion of the body, prevent or correct physical  
19 deformity or malfunction, or support a weak or deformed portion of  
20 the body, and includes any supplies used with such device, repair,  
21 and replacement parts. and

22 ~~(f) Prosthetic devices means devices which permanently or~~  
23 ~~temporarily replace a missing part or a nonfunctioning part of the~~  
24 ~~human body and includes any supplies used with such devices.~~

25 Sec. 54. Section 77-2704.10, Reissue Revised Statutes of  
26 Nebraska, is amended to read:

27 77-2704.10. Sales and use taxes shall not be imposed on  
28 the gross receipts from the sale, lease, or rental of and the



1 storage, use, or other consumption in this state of:

2 (1) Meals and food products, including soft drinks and  
3 candy, for human consumption served by public or private schools,  
4 school districts, student organizations, or parent-teacher  
5 associations pursuant to an agreement with the proper school  
6 authorities, in an elementary or secondary school or at any  
7 institution of higher education, public or private, during the  
8 regular school day or at an approved function of any such school or  
9 institution, or admissions to such functions, but such exemption  
10 shall not apply to sales or admissions at any facility or function  
11 which is open to the general public, except that concession sales  
12 by elementary and secondary schools, public or private, shall be  
13 exempt;

14 (2) Meals and food products, including soft drinks and  
15 candy, for human consumption when sold by a church at a function of  
16 such church or admissions to such functions;

17 (3) Meals and food products, including soft drinks and  
18 candy, for human consumption when served to patients and inmates of  
19 hospitals and other institutions licensed by the state for the care  
20 of human beings; ~~and~~

21 (4) Meals and food products, including soft drinks and  
22 candy, for human consumption when sold at a political event by  
23 ballot question committees, candidate committees, independent  
24 committees, and political party committees as defined in the  
25 Nebraska Political Accountability and Disclosure Act or admissions  
26 to such political event; and

27 (5) Meals and food products meals sold to the elderly,  
28 handicapped, or recipients of Supplemental Security Income by an

1 organization that actually accepts food coupons although it is not  
2 necessary for the purchaser to use food coupons to pay for the  
3 meal.

4           Sec. 55. Section 77-2704.13, Reissue Revised Statutes of  
5 Nebraska, is amended to read:

6           77-2704.13. Sales and use taxes shall not be imposed on  
7 the gross receipts from the sale, lease, or rental of and the  
8 storage, use, or other consumption in this state of:

9           (1) Sales and purchases of electricity, coal, gas, fuel  
10 oil, diesel fuel, tractor fuel, propane, gasoline, coke, nuclear  
11 fuel, and butane when more than fifty percent of the amount  
12 purchased is for use directly in irrigation or farming; ~~and~~

13           (2) Sales and purchases of such energy sources or fuels  
14 made before April 1, 1993, or after March 31, 1994, when more than  
15 fifty percent of the amount purchased is for use directly in  
16 processing, manufacturing, or refining, in the generation of  
17 electricity, or by any hospital. The state tax paid on purchases  
18 of such energy sources or fuels during the period beginning April  
19 1, 1993, and ending March 31, 1994, shall not exceed one hundred  
20 thousand dollars for any one location when more than fifty percent  
21 of the amount purchased is for use directly in processing,  
22 manufacturing, or refining or by any hospital. All purchases of  
23 such energy sources or fuels for use in the generation of  
24 electricity during the period beginning April 1, 1993, and ending  
25 March 31, 1994, shall be taxable. Any taxpayer who has paid the  
26 limit of state tax on such energy sources or fuels at one location  
27 shall be exempt on all other qualifying purchases at such location.  
28 Such taxpayer shall be entitled to a refund of any amount of state

1 or local option tax paid on an energy source or fuel exempt under  
2 this subdivision. A refund shall be made pursuant to section  
3 77-2708; and

4 (3) Sales and purchases of water used for irrigation of  
5 agricultural lands and manufacturing purposes.

6 Sec. 56. Section 77-2704.14, Reissue Revised Statutes of  
7 Nebraska, is amended to read:

8 77-2704.14. Sales and use taxes shall not be imposed on  
9 the gross receipts from the sale, lease, or rental of and the  
10 storage, use, or other consumption in this state of the use of  
11 coin-operated machines used for laundering and cleaning except the  
12 cleaning or washing of motor vehicles.

13 Sec. 57. Section 77-2704.24, Reissue Revised Statutes of  
14 Nebraska, is amended to read:

15 77-2704.24. (1) Sales and use taxes shall not be imposed  
16 on the gross receipts from the sale, lease, or rental of and the  
17 storage, use, or other consumption in this state of food or food  
18 ingredients except for prepared food and food sold through vending  
19 machines.

20 (2) For purposes of this section:

21 (a) Alcoholic beverages means beverages that are suitable  
22 for human consumption and contain one-half of one percent or more  
23 of alcohol by volume;

24 (b) Dietary supplement means any product, other than  
25 tobacco, intended to supplement the diet that contains one or more  
26 of the following dietary ingredients (i) a vitamin, (ii) a mineral,  
27 (iii) an herb or other botanical, (iv) an amino acid, (v) a dietary  
28 substance for use by humans to supplement the diet by increasing

1 the total dietary intake, or (iv) a concentrate, metabolite,  
2 constituent, extract, or combination of any ingredient described in  
3 subdivision (2)(b)(i) through (v) of this section; and is intended  
4 for ingestion in tablet, capsule, powder, softgel, gelcap, or  
5 liquid form or, if not intended for ingestion in such a form, is  
6 not presented as conventional food and is not represented for use  
7 as a sole item of a meal or of the diet; and is required to be  
8 labeled as a dietary supplement, identifiable by the supplemental  
9 facts box found on the label and as required pursuant to 21 C.F.R.  
10 101.36, as such regulation existed on January 1, 2003;

11 (c) Food and food ingredients means substances, whether  
12 in liquid, concentrated, solid, frozen, dried, or dehydrated form,  
13 that are sold for ingestion or chewing by humans and are consumed  
14 for their taste or nutritional value. Food and food ingredients  
15 does not include alcoholic beverages, dietary supplements, or  
16 tobacco;

17 (d) Food sold through vending machines means food that is  
18 dispensed from a machine or other mechanical device that accepts  
19 payment;

20 (e) Prepared food means:

21 (i) Food sold with eating utensils provided by the  
22 seller, including plates, knives, forks, spoons, glasses, cups,  
23 napkins, or straws. A plate does not include a container or  
24 packaging used to transport the food; and

25 (ii) Two or more food ingredients mixed or combined by  
26 the seller for sale as a single item and food sold in a heated  
27 state or heated by the seller, except:

28 (A) Food that is only cut, repackaged, or pasteurized by

1 the seller;

2 (B) Eggs, fish, meat, poultry, and foods containing these  
3 raw animal foods requiring cooking by the consumer as recommended  
4 by the Food and Drug Administration in chapter 3, part 401.11 of  
5 its Food Code, as it existed on January 1, 2003, so as to prevent  
6 food borne illnesses;

7 (C) Food sold by a seller whose proper primary North  
8 American Industry Classification System classification is  
9 manufacturing in sector 311, except subsector 3118, bakeries;

10 (D) Food sold in an unheated state by weight or volume as  
11 a single item;

12 (E) Bakery items, including bread, rolls, buns, biscuits,  
13 bagels, croissants, pastries, donuts, danish, cakes, tortes, pies,  
14 tarts, muffins, bars, cookies, and tortillas; and

15 (f) Tobacco means cigarettes, cigars, chewing or pipe  
16 tobacco, or any other item that contains tobacco. ~~products for~~  
17 human consumption which are eligible for purchase with food coupons  
18 issued by the United States Department of Agriculture pursuant to  
19 regulations in effect on October 1, 1983, regardless of whether the  
20 retailer from which the foods are purchased is participating in the  
21 food stamp program. For purposes of this section, food shall not  
22 include meals or other food prepared for immediate consumption on  
23 or off the premises of the retailer and shall not include foods  
24 sold through vending machines.

25 Sec. 58. Section 77-2704.26, Revised Statutes  
26 Supplement, 2002, is amended to read:

27 77-2704.26. Sales and use taxes shall not be imposed on  
28 the gross receipts from the sale, lease, or rental of and the

1 storage, use, or other consumption in this state of an aircraft  
2 delivered in this state to an individual who is a resident of  
3 another state or any other person who has a business location in  
4 another state when the aircraft is not to be registered or based in  
5 this state and it will not remain in this state more than ten days.  
6 Sales and use taxes shall not be imposed on the gross receipts from  
7 a service listed in subsection (4) of section ~~77-2702.07~~ 20 of this  
8 act that is rendered to an aircraft brought into this state by an  
9 individual who is a resident of another state or any other person  
10 who has a business location in another state when the aircraft is  
11 not to be registered or based in this state and it will not remain  
12 in this state more than ten days after the service is completed.

13           Sec. 59. (1) Except for a transaction that is subject to  
14 sales tax under the Nebraska Revenue Act of 1967, use tax shall not  
15 be imposed on the keeping, retaining, or exercising of any right or  
16 power over property for the purpose of subsequently transporting it  
17 outside the state or for the purpose of being processed,  
18 fabricated, or manufactured into, attached to, or incorporated into  
19 other property to be transported outside the state and thereafter  
20 used solely outside the state.

21           (2) (a) Except as provided in subdivisions (2) (b) through  
22 (e) of this subsection, when a person purchases property in another  
23 state, the Commonwealth of Puerto Rico, any territory or possession  
24 of the United States, or any foreign country with the intent of  
25 using such property in such other state, commonwealth, territory,  
26 possession, or country and such property is actually used in the  
27 other state, commonwealth, territory, possession, or country for  
28 its intended purpose, the property shall not be subject to tax in

1 this state.

2 (b) Subdivision (2)(a) of this subsection only applies to  
3 a motor vehicle, trailer, or semitrailer as defined in section  
4 60-301 when it is licensed for operation on the highways of the  
5 other state, commonwealth, territory, possession, or country prior  
6 to being brought into this state. Licensed for operation on the  
7 highways does not include any temporary registration, licensing, or  
8 in transit procedure that allows nonresidents to operate the motor  
9 vehicle, trailer, or semitrailer on the highways of the other  
10 state, commonwealth, territory, possession, or country for a  
11 limited time with the intent to remove the motor vehicle from the  
12 other state, commonwealth, territory, possession, or country.

13 (c) Subdivision (2)(a) of this subsection does not apply  
14 to an aircraft which is brought into this state within one year  
15 after purchase and (i) is regularly based within this state or (ii)  
16 more than one-half of the aircraft's operating hours are within  
17 this state.

18 For purposes of subdivision (2)(c) of this subsection,  
19 operation of the aircraft for the purpose of maintenance, repair,  
20 or fabrication with subsequent removal from this state upon  
21 completion of such maintenance, repair, or fabrication shall not be  
22 considered operating hours.

23 (d) Subdivision (2)(a) of this subsection shall only  
24 apply to a motorboat as defined in section 37-1204 when it is  
25 registered for operation in the other state, commonwealth,  
26 territory, possession, or country prior to being brought into this  
27 state.

28 (e) Subdivision (2)(a) of this subsection does not apply

1 to any property that is manufactured, processed, or fabricated in  
2 another state and that is not used for its intended purpose in the  
3 other state after its manufacture, processing, or fabrication.

4       Sec. 60. Sales and use taxes shall not be imposed on the  
5 gross receipts from the sale, lease, or rental of and the storage,  
6 use, or other consumption in this state of:

7       (1) Property which will enter into and become an  
8 ingredient or component part of property manufactured, processed,  
9 or fabricated for ultimate sale at retail; or

10       (2) A service listed in subsection (4) of section 20 of  
11 this act which will become an ingredient or component part of a  
12 service listed in subsection (4) of section 20 of this act for  
13 ultimate sale at retail.

14       Sec. 61. Sales and use taxes shall not be imposed on the  
15 gross receipts from the sale, lease, or rental of and the storage,  
16 use, or other consumption in this state of:

17       (1) Any form of animal life of a kind the products of  
18 which ordinarily constitute food for human consumption. Animal  
19 life shall include live poultry or livestock on the hoof when sales  
20 are made by the grower, producer, feeder, or any person engaged in  
21 the business of bartering, buying, or selling live poultry or  
22 livestock on the hoof;

23       (2) Seeds and annual plants, the products of which  
24 ordinarily constitute food for human consumption and which seeds  
25 and annual plants are sold to commercial producers of such  
26 products, and seed legumes, seed grasses, and seed grains when sold  
27 to be used exclusively for agricultural purposes;

28       (3) Agricultural chemicals, adjuvants, surfactants,



1 bonding agents, clays, oils, and any other additives or  
2 compatibility agents for use in commercial agriculture and applied  
3 to land or crops and sold in any tax period that has not been  
4 closed by the applicable statute of limitations. Agricultural  
5 chemicals does not mean chemicals, adjuvants, surfactants, bonding  
6 agents, clays, oils, and any other additives or compatibility  
7 agents applied to harvested grains stored in commercial elevators;  
8 or

9 (4) Oxygen for use in aquaculture as defined in section  
10 2-3804.01.

11 Sec. 62. Sales and use taxes shall not be imposed on the  
12 gross receipts from the sale, lease, or rental of and the storage,  
13 use, or other consumption in this state of:

14 (1) Nonreturnable containers when sold without contents  
15 to persons who place contents in the container and sell the  
16 contents together with the container;

17 (2) Containers when sold with contents if the sales price  
18 of the contents is not required to be included in the measure of  
19 the taxes imposed by the Nebraska Revenue Act of 1967; and

20 (3) Returnable containers when sold with contents in  
21 connection with a retail sale of the contents or when resold for  
22 refilling.

23 For purposes of this section, returnable containers means  
24 containers of a kind customarily returned by the buyer of the  
25 contents for reuse. All other containers are nonreturnable  
26 containers.

27 Sec. 63. Sales and use taxes shall not be imposed on the  
28 gross receipts from the sale, lease, or rental of and the storage,

1 use, or other consumption in this state of property or services the  
2 transfer of which to the consumer constitutes an occasional sale or  
3 the transfer of which to the consumer is made by way of an  
4 occasional sale.

5           Sec. 64. Sales and use taxes shall not be imposed on the  
6 gross receipts from the sale, lease, or rental of and the storage,  
7 use, or other consumption in this state of property or services the  
8 sale, purchase, or use of which has been taxed to that taxpayer in  
9 another state, territory, or possession of the United States when  
10 such other state, territory, or possession grants a reciprocal  
11 exclusion or an exemption to similar transactions in this state.

12           Sec. 65. Sales and use taxes shall not be imposed on the  
13 gross receipts from the sale, lease, or rental of and the storage,  
14 use, or other consumption in this state from the purchase in this  
15 state or the purchase outside this state, with title passing in  
16 this state, of materials and replacement parts and any associated  
17 labor used as or used directly in the repair and maintenance or  
18 manufacture of railroad rolling stock, whether owned by a railroad  
19 or by any person, whether a common or contract carrier or  
20 otherwise, motor vehicles, watercraft, or aircraft engaged as  
21 common or contract carriers or the purchase in such manner of motor  
22 vehicles, watercraft, or aircraft to be used as common or contract  
23 carriers. All purchasers seeking to take advantage of the  
24 exemption shall apply to the Tax Commissioner for a common or  
25 contract carrier exemption. All common or contract carrier  
26 exemption certificates shall expire on October 31, 1986, and on  
27 October 31 every three years thereafter. All persons seeking to  
28 continue to take advantage of the common or contract carrier

1 exemption shall apply for a new certificate at the expiration of  
2 the prior certificate. The Tax Commissioner shall notify such  
3 exemption certificate holders at least sixty days prior to the  
4 expiration date of such certificate that their certificate will  
5 expire and be null and void as of such date.

6           Sec. 66. Sales and use taxes shall not be imposed on the  
7 gross receipts from the sale, lease, or rental of and the storage,  
8 use, or other consumption in this state of sales of  
9 telecommunications services between telecommunications companies,  
10 including division of revenue, settlements, or carrier access  
11 charges.

12           Sec. 67. Sales and use taxes shall not be imposed on the  
13 gross receipts from the sale, lease, or rental of and the storage,  
14 use, or other consumption in this state of services rendered using  
15 a prepaid telephone calling arrangement.

16           Sec. 68. Sales and use taxes shall not be imposed on the  
17 gross receipts from the sale, lease, or rental of and the storage,  
18 use, or other consumption in this state from the sale or rental of  
19 videotape and film rentals, satellite programming, and satellite  
20 programming service when the sales tax or the admission tax is  
21 charged under the Nebraska Revenue Act of 1967 and except as  
22 provided in section 77-2704.39.

23           Sec. 69. Sales and use taxes shall not be imposed on the  
24 gross receipts from the sale, lease, or rental of and the storage,  
25 use, or other consumption in this state from the sale or rental of  
26 food or food ingredients which are actually purchased by electronic  
27 benefits transfer or with food coupons under regulations issued by  
28 the United States Department of Agriculture.

1           Sec. 70. Section 77-2705, Revised Statutes Supplement,  
2 2002, is amended to read:

3           77-2705. (1) ~~Every~~ Except as provided in subsection (9)  
4 of this section, every retailer shall register with the Tax  
5 Commissioner and give:

6           (a) The name and address of all agents operating in this  
7 state;

8           (b) The location of all distribution or sales houses or  
9 offices or other places of business in this state;

10          (c) Such other information as the Tax Commissioner may  
11 require; and

12          (d) If the retailer is an individual, his or her social  
13 security number.

14          (2) Every person furnishing public utility service as  
15 defined in subsection (2) of section ~~77-2702.07~~ 20 of this act  
16 shall register with the Tax Commissioner and give:

17          (a) The address of each office open to the public in  
18 which such public utility service business is transacted with  
19 consumers; and

20          (b) Such other information as the Tax Commissioner may  
21 require.

22          (3) It shall be unlawful for any person to engage in or  
23 transact business as a seller within this state after June 1, 1967,  
24 unless a permit or permits shall have been issued to him or her as  
25 prescribed in this section. Every person desiring to engage in or  
26 to conduct business as a seller within this state shall file with  
27 the Tax Commissioner an application for a permit for each place of  
28 business. There shall be no charge to the retailer for the

1 application for or issuance of a permit except as otherwise  
2 provided in this section.

3 (4) Every application for a permit shall:

4 (a) Be made upon a form prescribed by the Tax  
5 Commissioner;

6 (b) Set forth the name under which the applicant  
7 transacts or intends to transact business and the location of his  
8 or her place or places of business;

9 (c) Set forth such other information as the Tax  
10 Commissioner may require; and

11 (d) Be signed by the owner and include his or her social  
12 security number if he or she is a natural person; in the case of an  
13 association or partnership, by a member or partner; in case of a  
14 limited liability company, by a member or some person authorized by  
15 the limited liability company to sign such kinds of applications;  
16 and in the case of a corporation, by an executive officer or some  
17 person authorized by the corporation to sign such kinds of  
18 applications.

19 (5) After compliance with subsections (1) through (4) of  
20 this section by the applicant, the Tax Commissioner shall grant and  
21 issue to each applicant a separate permit for each place of  
22 business within the state. A permit shall not be assignable and  
23 shall be valid only for the person in whose name it is issued and  
24 for the transaction of business at the place designated therein.  
25 It shall at all times be conspicuously displayed at the place for  
26 which issued and shall be valid and effective until revoked by the  
27 Tax Commissioner.

28 (6) (a) Whenever the holder of a permit issued under

1 subsection (5) of this section fails to comply with any provision  
2 of the Nebraska Revenue Act of 1967 relating to the retail sales  
3 tax or with any rule or regulation of the Tax Commissioner relating  
4 to such tax prescribed and adopted under such act, the Tax  
5 Commissioner upon hearing, after giving the person twenty days'  
6 notice in writing specifying the time and place of hearing and  
7 requiring him or her to show cause why his or her permit or permits  
8 should not be revoked, may revoke or suspend any one or more of the  
9 permits held by the person. The Tax Commissioner shall give to the  
10 person written notice of the suspension or revocation of any of his  
11 or her permits. The notices may be served personally or by mail in  
12 the manner prescribed for service of notice of a deficiency  
13 determination.

14 (b) The Tax Commissioner shall have the power to restore  
15 permits which have been revoked but shall not issue a new permit  
16 after the revocation of a permit unless he or she is satisfied that  
17 the former holder of the permit will comply with the provisions of  
18 such act relating to the retail sales tax and the regulations of  
19 the Tax Commissioner. A seller whose permit has been previously  
20 suspended or revoked under this subsection shall pay the Tax  
21 Commissioner a fee of twenty-five dollars for the renewal or  
22 issuance of a permit in the event of a first revocation and fifty  
23 dollars for renewal after each successive revocation.

24 (c) The action of the Tax Commissioner may be appealed by  
25 the taxpayer in the same manner as a final deficiency  
26 determination.

27 (7) For the purpose of more efficiently securing the  
28 payment, collection, and accounting for the sales and use taxes and

1 for the convenience of the retailer in collecting the sales tax, it  
2 shall be the duty of the Tax Commissioner to formulate and  
3 promulgate appropriate rules and regulations providing a form and  
4 method for the registration of exempt purchases and the  
5 documentation of exempt sales.

6 (8) If any person, firm, corporation, association, or  
7 agent thereof presents an exempt sale certificate to the seller for  
8 property which is purchased by a taxpayer or for a use other than  
9 those enumerated in the Nebraska Revenue Act of 1967 as exempted  
10 from the computation of sales and use taxes, the Tax Commissioner  
11 may, in addition to other penalties provided by law, impose,  
12 assess, and collect from the purchaser or the agent thereof a  
13 penalty of one hundred dollars or ten times the tax, whichever  
14 amount is larger, for each instance of such presentation and misuse  
15 of an exempt sale certificate. Such amount shall be in addition to  
16 any tax, interest, or penalty otherwise imposed.

17 Any report, name, or information which is supplied to the  
18 Tax Commissioner regarding a violation specified in this section,  
19 including the identity of the informer, shall be subject to the  
20 pertinent provisions regarding wrongful disclosure in section  
21 77-2711.

22 (9) Pursuant to the streamlined sales and use tax  
23 agreement, the state shall participate in an online registration  
24 system that will allow retailers to register in all the member  
25 states. The state hereby agrees to honor and abide by the retailer  
26 registration decisions made by the governing board pursuant to the  
27 agreement.

28 Sec. 71. Section 77-2708, Revised Statutes Supplement,

1 2002, is amended to read:

2 77-2708. (1) (a) The sales and use taxes imposed by the  
3 Nebraska Revenue Act of 1967 shall be due and payable to the Tax  
4 Commissioner monthly on or before the twenty-fifth day of the month  
5 next succeeding each monthly period unless otherwise provided  
6 pursuant to the Nebraska Revenue Act of 1967.

7 (b) (i) On or before the twenty-fifth day of the month  
8 following each monthly period or such other period as the Tax  
9 Commissioner may require, a return for such period, along with all  
10 taxes due, shall be filed with the Tax Commissioner in such form  
11 and content as the Tax Commissioner may prescribe and containing  
12 such information as the Tax Commissioner deems necessary for the  
13 proper administration of the Nebraska Revenue Act of 1967. The Tax  
14 Commissioner, if he or she deems it necessary in order to insure  
15 payment to or facilitate the collection by the state of the amount  
16 of sales or use taxes due, may require returns and payment of the  
17 amount of such taxes for periods other than monthly periods in the  
18 case of a particular seller, retailer, or purchaser, as the case  
19 may be. The Tax Commissioner shall by rule and regulation require  
20 reports and tax payments from sellers, retailers, or purchasers  
21 depending on their yearly tax liability. Except as required by the  
22 streamlined sales and use tax agreement, annual ~~Annual~~ returns  
23 shall be required if such sellers', retailers', or purchasers'  
24 yearly tax liability is less than nine hundred dollars, quarterly  
25 returns shall be required if their yearly tax liability is nine  
26 hundred dollars or more and less than three thousand dollars, and  
27 monthly returns shall be required if their yearly tax liability is  
28 three thousand dollars or more. The Tax Commissioner shall have



1 the discretion to allow an annual return for seasonal retailers,  
2 even when their yearly tax liability exceeds the amounts listed in  
3 this subdivision.

4           The Tax Commissioner may adopt and promulgate rules and  
5 regulations to allow annual, semiannual, or quarterly returns for  
6 any retailer making monthly remittances or payments of sales and  
7 use taxes by electronic funds transfer or for any retailer  
8 remitting tax to the state pursuant to the streamlined sales and  
9 use tax agreement. Such rules and regulations may establish a  
10 method of determining the amount of the payment that will result in  
11 substantially all of the tax liability being paid each quarter. At  
12 least once each year, the difference between the amount paid and  
13 the amount due shall be reconciled. If the difference is more than  
14 ten percent of the amount paid, a penalty of fifty percent of the  
15 unpaid amount shall be imposed.

16           (ii) For purposes of the sales tax, a return shall be  
17 filed by every retailer liable for collection from a purchaser and  
18 payment to the state of the tax, except that a combined sales tax  
19 return may be filed for all licensed locations which are subject to  
20 common ownership. For purposes of this subdivision, common  
21 ownership shall mean the same person or persons own eighty percent  
22 or more of each licensed location. For purposes of the use tax, a  
23 return shall be filed by every retailer engaged in business in this  
24 state and by every person who has purchased property, the storage,  
25 use, or other consumption of which is subject to the use tax, but  
26 who has not paid the use tax due to a retailer required to collect  
27 the tax.

28           (iii) The Tax Commissioner may require that returns

1 ~~Returns shall~~ be signed by the person required to file the return  
2 or by his or her duly authorized agent but need not be verified by  
3 oath.

4 (iv) A taxpayer who keeps his or her regular books and  
5 records on a cash basis, an accrual basis, or any generally  
6 recognized accounting basis which correctly reflects the operation  
7 of the business may file the sales and use tax returns required by  
8 the Nebraska Revenue Act of 1967 on the same accounting basis that  
9 is used for the regular books and records, except that on credit,  
10 conditional, and installment sales, the retailer who keeps his or  
11 her books on an accrual basis may report such sales on the cash  
12 basis and pay the tax upon the collections made during each month.  
13 If a taxpayer transfers, sells, assigns, or otherwise disposes of  
14 an account receivable, he or she shall be deemed to have received  
15 the full balance of the consideration for the original sale and  
16 shall be liable for the remittance of the sales tax on the balance  
17 of the total sale price not previously reported, except that such  
18 transfer, sale, assignment, or other disposition of an account  
19 receivable by a retailer to a subsidiary shall not be deemed to  
20 require the retailer to pay the sales tax on the credit sale  
21 represented by the account transferred prior to the time the  
22 customer makes payment on such account. If the subsidiary does not  
23 obtain a Nebraska sales tax permit, the taxpayer shall obtain a  
24 surety bond in favor of the State of Nebraska to insure payment of  
25 the tax and any interest and penalty imposed thereon under this  
26 section in an amount not less than two times the amount of tax  
27 payable on outstanding accounts receivable held by the subsidiary  
28 as of the end of the prior calendar year. Failure to obtain either

1 a sales tax permit or a surety bond in accordance with this section  
2 shall result in the payment on the next required filing date of all  
3 sales taxes not previously remitted. When the retailer has adopted  
4 one basis or the other of reporting credit, conditional, or  
5 installment sales and paying the tax thereon, he or she will not be  
6 permitted to change from that basis without first having notified  
7 the Tax Commissioner.

8 (c) Except as provided in the streamlined sales and use  
9 tax agreement, the ~~The~~ taxpayer required to file the return shall  
10 deliver or mail any required return together with a remittance of  
11 the net amount of the tax due to the office of the Tax Commissioner  
12 on or before the required filing date. Failure to file the return,  
13 filing after the required filing date, failure to remit the net  
14 amount of the tax due, or remitting the net amount of the tax due  
15 after the required filing date shall be cause for a penalty, in  
16 addition to interest, of ten percent of the amount of tax not paid  
17 by the required filing date or twenty-five dollars, whichever is  
18 greater, unless the penalty is being collected under subdivision  
19 (1)(i) or (1)(j)(i) of section 77-2703 by a county treasurer, a  
20 designated county official, or the Department of Motor Vehicles, in  
21 which case the penalty shall be five dollars.

22 (d) For all sales tax collected prior to October 1, 2002,  
23 the taxpayer shall deduct and withhold, from the taxes otherwise  
24 due from him or her on his or her tax return, two and one-half  
25 percent of the first three thousand dollars remitted each month and  
26 one-half of one percent of all amounts in excess of three thousand  
27 dollars remitted each month to reimburse himself or herself for the  
28 cost of collecting the tax. For all sales tax collected on and

1 after October 1, 2002, the taxpayer shall deduct and withhold, from  
2 the taxes otherwise due from him or her on his or her tax return,  
3 two and one-half percent of the first three thousand dollars  
4 remitted each month to reimburse himself or herself for the cost of  
5 collecting the tax. Taxpayers filing a combined return as allowed  
6 by subdivision (1)(b)(ii) of this subsection shall compute such  
7 collection fees on the basis of the receipts and liability of each  
8 licensed location.

9 (2)(a) If the Tax Commissioner determines that any sales  
10 or use tax amount, penalty, or interest has been paid more than  
11 once, has been erroneously or illegally collected or computed, or  
12 has been paid and the purchaser qualifies for a refund under  
13 section 77-2708.01, the Tax Commissioner shall set forth that fact  
14 in his or her records and the excess amount collected or paid may  
15 be credited on any sales, use, or income tax amounts then due and  
16 payable from the person under the Nebraska Revenue Act of 1967.  
17 Any balance may be refunded to the person by whom it was paid or  
18 his or her successors, administrators, or executors.

19 (b) No refund shall be allowed unless a claim therefor is  
20 filed with the Tax Commissioner by the person who made the  
21 overpayment or his or her attorney, assignee, executor, or  
22 administrator within three years from the required filing date  
23 following the close of the period for which the overpayment was  
24 made, within six months after any determination becomes final under  
25 section 77-2709, or within six months from the date of overpayment  
26 with respect to such determinations, whichever of these three  
27 periods expires later, unless the credit relates to a period for  
28 which a waiver has been given. Failure to file a claim within the

1 time prescribed in this subsection shall constitute a waiver of any  
2 demand against the state on account of overpayment.

3 (c) Every claim shall be in writing on forms prescribed  
4 by the Tax Commissioner and shall state the specific amount and  
5 grounds upon which the claim is founded. No refund shall be made  
6 in any amount less than two dollars.

7 (d) The Tax Commissioner shall allow or disallow a claim  
8 within one hundred eighty days after it has been filed. If the Tax  
9 Commissioner has neither allowed nor disallowed a claim within such  
10 one hundred eighty days, the claim shall be deemed to have been  
11 allowed.

12 (e) Within thirty days after disallowing any claim in  
13 whole or in part, the Tax Commissioner shall serve notice of his or  
14 her action on the claimant in the manner prescribed for service of  
15 notice of a deficiency determination.

16 (f) Within thirty days after the mailing of the notice of  
17 the Tax Commissioner's action upon a claim filed pursuant to the  
18 Nebraska Revenue Act of 1967, the action of the Tax Commissioner  
19 shall be final unless the taxpayer seeks review of the Tax  
20 Commissioner's determination as provided in section 77-27,127.

21 (g) Upon the allowance of a credit or refund of any sum  
22 erroneously or illegally assessed or collected, of any penalty  
23 collected without authority, or of any sum which was excessive or  
24 in any manner wrongfully collected, interest shall be allowed and  
25 paid on the amount of such credit or refund at the rate specified  
26 in section 45-104.02, as such rate may from time to time be  
27 adjusted, from the date such sum was paid or from the date the  
28 return was required to be filed, whichever date is later, to the

1 date of the allowance of the refund or, in the case of a credit, to  
2 the due date of the amount against which the credit is allowed, but  
3 in the case of a voluntary and unrequested payment in excess of  
4 actual tax liability or a refund under section 77-2708.01, no  
5 interest shall be allowed when such excess is refunded or credited.

6 (h) No suit or proceeding shall be maintained in any  
7 court for the recovery of any amount alleged to have been  
8 erroneously or illegally determined or collected unless a claim for  
9 refund or credit has been duly filed.

10 (i) The Tax Commissioner may recover any refund or part  
11 thereof which is erroneously made and any credit or part thereof  
12 which is erroneously allowed by issuing a deficiency determination  
13 within one year from the date of refund or credit or within the  
14 period otherwise allowed for issuing a deficiency determination,  
15 whichever expires later.

16 (j) (i) Credit shall be allowed to the retailer,  
17 contractor, or repairperson for sales or use taxes paid pursuant to  
18 the Nebraska Revenue Act of 1967 on any deduction taken that is  
19 attributed to bad debts not including interest. Bad debt shall  
20 have the same meaning as in 26 U.S.C. 166, as such section existed  
21 on January 1, 2003. However, the amount calculated pursuant to 26  
22 U.S.C. 166 shall be adjusted to exclude: Financing charges or  
23 interest; sales or use taxes charged on the purchase price;  
24 uncollectable amounts on property that remain in the possession of  
25 the seller until the full purchase price is paid; and expenses  
26 incurred in attempting to collect any debt and repossessed  
27 property.

28 (ii) Bad debts may be deducted on the return for the

1 period during which the bad debt is written off as uncollectable in  
2 the claimant's books and records and is eligible to be deducted for  
3 federal income tax purposes. A claimant who is not required to  
4 file federal income tax returns may deduct a bad debt on a return  
5 filed for the period in which the bad debt is written off as  
6 uncollectable in the claimant's books and records and would be  
7 eligible for a bad debt deduction for federal income tax purposes  
8 if the claimant was required to file a federal income tax return.

9 (iii) If a deduction is taken for a bad debt and the debt  
10 is subsequently collected in whole or in part, the tax on the  
11 amount so collected must be paid and reported on the return filed  
12 for the period in which the collection is made.

13 (iv) When the amount of bad debt exceeds the amount of  
14 taxable sales for the period during which the bad debt is written  
15 off, a refund claim may be filed within the otherwise applicable  
16 statute of limitations for refund claims. The statute of  
17 limitations shall be measured from the due date of the return on  
18 which the bad debt could first be claimed.

19 (v) Where filing responsibilities have been assumed by a  
20 certified service provider, the service provider may claim, on  
21 behalf of the retailer, any bad debt allowance provided by this  
22 section. The certified service provider shall credit or refund the  
23 full amount of any bad debt allowance or refund received to the  
24 retailer.

25 (vi) For purposes of reporting a payment received on a  
26 previously claimed bad debt, any payments made on a debt or account  
27 are applied first proportionally to the taxable price of the  
28 property or service and the sales tax thereon, and secondly to

1 interest, service charges, and any other charges.

2 (vii) In situations in which the books and records of the  
3 party claiming the bad debt allowance support an allocation of the  
4 bad debts among the member states in the streamlined sales and use  
5 tax agreement, the state shall permit the allocation. +

6 ~~(i) Sales represented by that portion of an account~~  
7 ~~determined to be worthless and actually charged off for federal~~  
8 ~~income tax purposes. If such accounts are thereafter collected by~~  
9 ~~the retailer, contractor, or repairperson, a tax shall be paid upon~~  
10 ~~the amount so collected, or~~

11 ~~(ii) The portion of the purchase price remaining unpaid~~  
12 ~~at the time of a repossession made under the terms of a conditional~~  
13 ~~sales contract.~~

14 Sec. 72. Section 77-2708.01, Reissue Revised Statutes of  
15 Nebraska, is amended to read:

16 77-2708.01. ~~(1)(a) Any purchaser of depreciable~~  
17 ~~agricultural machinery or equipment purchased on or after January~~  
18 ~~1, 1992, and before January 1, 1993, for use in commercial~~  
19 ~~agriculture may apply for a refund of all of the Nebraska sales or~~  
20 ~~use taxes and all of the local option sales or use taxes paid on~~  
21 ~~the machinery or equipment.~~

22 (1) Any ~~(b) On or after January 1, 1993, any~~ purchaser of  
23 depreciable repairs or parts for agricultural machinery or  
24 equipment used in commercial agriculture may apply for a refund of  
25 all of the Nebraska sales or use taxes and all of the local option  
26 sales or use taxes paid on the repairs or parts.

27 (2) The purchaser shall file a claim within three years  
28 after the date of purchase with the Tax Commissioner pursuant to



1 section 77-2708. The information provided on a tax refund claim  
2 allowed under this section may be disclosed to any other tax  
3 official of this state.

4 Sec. 73. Section 77-2711, Revised Statutes Supplement,  
5 2002, is amended to read:

6 77-2711. (1) (a) The Tax Commissioner shall enforce  
7 sections ~~77-2702.03~~ 77-2703 to 77-2713 and sections 8 to 47, 49 to  
8 52, and 59 to 69 of this act and may prescribe, adopt, and enforce  
9 rules and regulations relating to the administration and  
10 enforcement of such sections.

11 (b) The Tax Commissioner may prescribe the extent to  
12 which any ruling or regulation shall be applied without retroactive  
13 effect.

14 (2) The Tax Commissioner may employ accountants,  
15 auditors, investigators, assistants, and clerks necessary for the  
16 efficient administration of the Nebraska Revenue Act of 1967 and  
17 may delegate authority to his or her representatives to conduct  
18 hearings, prescribe regulations, or perform any other duties  
19 imposed by such act.

20 (3) (a) Every seller, every retailer, and every person  
21 storing, using, or otherwise consuming in this state property  
22 purchased from a retailer shall keep such records, receipts,  
23 invoices, and other pertinent papers in such form as the Tax  
24 Commissioner may reasonably require.

25 (b) Every such seller, retailer, or person shall keep  
26 such records for not less than three years from the making of such  
27 records unless the Tax Commissioner in writing sooner authorized  
28 their destruction.

1           (4) The Tax Commissioner or any person authorized in  
2 writing by him or her may examine the books, papers, records, and  
3 equipment of any person selling property and any person liable for  
4 the use tax and may investigate the character of the business of  
5 the person in order to verify the accuracy of any return made or,  
6 if no return is made by the person, to ascertain and determine the  
7 amount required to be paid. In the examination of any person  
8 selling property or of any person liable for the use tax, an  
9 inquiry shall be made as to the accuracy of the reporting of city  
10 sales and use taxes for which the person is liable under the Local  
11 Option Revenue Act or sections 13-319, 13-324, and 13-2813 and the  
12 accuracy of the allocation made between the various counties,  
13 cities, villages, and municipal counties of the tax due. The Tax  
14 Commissioner may make or cause to be made copies of resale or  
15 exemption certificates and may pay a reasonable amount to the  
16 person having custody of the records for providing such copies.

17           (5) The taxpayer shall have the right to keep or store  
18 his or her records at a point outside this state and shall make his  
19 or her records available to the Tax Commissioner at all times.

20           (6) In administration of the use tax, the Tax  
21 Commissioner may require the filing of reports by any person or  
22 class of persons having in his, her, or their possession or custody  
23 information relating to sales of property, the storage, use, or  
24 other consumption of which is subject to the tax. The report shall  
25 be filed when the Tax Commissioner requires and shall set forth the  
26 names and addresses of purchasers of the property, the sales price  
27 of the property, the date of sale, and such other information as  
28 the Tax Commissioner may require.

1           (7) It shall be a Class I misdemeanor for the Tax  
2 Commissioner or any official or employee of the Tax Commissioner to  
3 make known in any manner whatever the business affairs, operations,  
4 or information obtained by an investigation of records and  
5 activities of any retailer or any other person visited or examined  
6 in the discharge of official duty or the amount or source of  
7 income, profits, losses, expenditures, or any particular thereof,  
8 set forth or disclosed in any return, or to permit any return or  
9 copy thereof, or any book containing any abstract or particulars  
10 thereof to be seen or examined by any person not connected with the  
11 Tax Commissioner. Nothing in this section shall be construed to  
12 prohibit (a) the delivery to a taxpayer, his or her duly authorized  
13 representative, or his or her successors, receivers, trustees,  
14 executors, administrators, assignees, or guarantors, if directly  
15 interested, of a certified copy of any return or report in  
16 connection with his or her tax, (b) the publication of statistics  
17 so classified as to prevent the identification of particular  
18 reports or returns and the items thereof, (c) the inspection by the  
19 Attorney General, other legal representative of the state, or  
20 county attorney of the reports or returns of any taxpayer when  
21 either (i) information on the reports or returns is considered by  
22 the Attorney General to be relevant to any action or proceeding  
23 instituted by the taxpayer or against whom an action or proceeding  
24 is being considered or has been commenced by any state agency or  
25 the county or (ii) the taxpayer has instituted an action to review  
26 the tax based thereon or an action or proceeding against the  
27 taxpayer for collection of tax or failure to comply with the  
28 Nebraska Revenue Act of 1967 is being considered or has been

1 commenced, (d) the furnishing of any information to the United  
2 States Government or to states allowing similar privileges to the  
3 Tax Commissioner, (e) the disclosure of information and records to  
4 a collection agency contracting with the Tax Commissioner pursuant  
5 to sections 77-377.01 to 77-377.04, or (f) the disclosure to  
6 another party to a transaction of information and records  
7 concerning the transaction between the taxpayer and the other  
8 party.

9 (8) Notwithstanding the provisions of subsection (7) of  
10 this section, the Tax Commissioner may permit the Postal Inspector  
11 of the United States Postal Service or his or her delegates to  
12 inspect the reports or returns of any person filed pursuant to the  
13 Nebraska Revenue Act of 1967 when information on the reports or  
14 returns is relevant to any action or proceeding instituted or being  
15 considered by the United States Postal Service against such person  
16 for the fraudulent use of the mails to carry and deliver false and  
17 fraudulent tax returns to the Tax Commissioner with the intent to  
18 defraud the State of Nebraska or to evade the payment of Nebraska  
19 state taxes.

20 (9) Notwithstanding the provisions of subsection (7) of  
21 this section, the Tax Commissioner may permit other tax officials  
22 of this state to inspect the tax returns, reports, and applications  
23 filed under sections ~~77-2702.03~~ 77-2703 to 77-2713 and sections 8  
24 to 47, 49 to 52, and 59 to 69 of this act, but such inspection  
25 shall be permitted only for purposes of enforcing a tax law and  
26 only to the extent and under the conditions prescribed by the rules  
27 and regulations of the Tax Commissioner.

28 (10) Notwithstanding the provisions of subsection (7) of

1 this section, the Tax Commissioner may, upon request, provide the  
2 county board of any county which has exercised the authority  
3 granted by section 81-1254 with a list of the names and addresses  
4 of the hotels located within the county for which lodging sales tax  
5 returns have been filed or for which lodging sales taxes have been  
6 remitted for the county's County Visitors Promotion Fund under the  
7 Nebraska Visitors Development Act.

8           The information provided by the Tax Commissioner shall  
9 indicate only the names and addresses of the hotels located within  
10 the requesting county for which lodging sales tax returns have been  
11 filed for a specified period and the fact that lodging sales taxes  
12 remitted by or on behalf of the hotel have constituted a portion of  
13 the total sum remitted by the state to the county for a specified  
14 period under the provisions of the Nebraska Visitors Development  
15 Act. No additional information shall be revealed.

16           (11) In all proceedings under the Nebraska Revenue Act of  
17 1967, the Tax Commissioner may act for and on behalf of the people  
18 of the State of Nebraska. The Tax Commissioner in his or her  
19 discretion may waive all or part of any penalties provided by the  
20 provisions of such act, but may not waive the minimum interest on  
21 delinquent taxes specified in section 45-104.02, as such rate may  
22 from time to time be adjusted, except interest on use taxes  
23 voluntarily reported by an individual.

24           (12) (a) The purpose of this subsection is to set forth  
25 the state's policy for the protection of the confidentiality rights  
26 of all participants in the system operated pursuant to the  
27 streamlined sales and use tax agreement and of the privacy  
28 interests of consumers who deal with model 1 sellers.

1           (b) For purposes of this subsection:

2           (i) Anonymous data means information that does not  
3 identify a person;

4           (ii) Confidential taxpayer information means all  
5 information that is protected under a member state's laws,  
6 regulations, and privileges; and

7           (iii) Personally identifiable information means  
8 information that identifies a person. The term anonymous data  
9 means information that does not identify a person.

10           (c) The state agrees that a fundamental precept for model  
11 1 sellers is to preserve the privacy of consumers by protecting  
12 their anonymity. With very limited exceptions, a certified service  
13 provider shall perform its tax calculation, remittance, and  
14 reporting functions without retaining the personally identifiable  
15 information of consumers.

16           (d) The governing board of the member states in the  
17 streamlined sales and use tax agreement may certify a certified  
18 service provider only if that certified service provider certifies  
19 that:

20           (i) Its system has been designed and tested to ensure  
21 that the fundamental precept of anonymity is respected;

22           (ii) That personally identifiable information is only  
23 used and retained to the extent necessary for the administration of  
24 model 1 with respect to exempt purchasers;

25           (iii) It provides consumers clear and conspicuous notice  
26 of its information practices, including what information it  
27 collects, how it collects the information, how it uses the  
28 information, how long, if at all, it retains the information, and

1 whether it discloses the information to member states. Such notice  
2 shall be satisfied by a written privacy policy statement accessible  
3 by the public on the web site of the certified service provider;

4 (iv) Its collection, use, and retention of personally  
5 identifiable information is limited to that required by the member  
6 states to ensure the validity of exemptions from taxation that are  
7 claimed by reason of a consumer's status or the intended use of the  
8 goods or services purchased; and

9 (v) It provides adequate technical, physical, and  
10 administrative safeguards so as to protect personally identifiable  
11 information from unauthorized access and disclosure.

12 (e) The state shall provide public notification to  
13 consumers, including their exempt purchasers, of the state's  
14 practices relating to the collection, use, and retention of  
15 personally identifiable information.

16 (f) When any personally identifiable information that has  
17 been collected and retained is no longer required for the purposes  
18 set forth in subdivision (12)(d)(iv) of this section, such  
19 information shall no longer be retained by the member states.

20 (g) When personally identifiable information regarding an  
21 individual is retained by or on behalf of the state, it shall  
22 provide reasonable access by such individual to his or her own  
23 information in the state's possession and a right to correct any  
24 inaccurately recorded information.

25 (h) If anyone other than a member state, or a person  
26 authorized by that state's law or the agreement, seeks to discover  
27 personally identifiable information, the state from whom the  
28 information is sought should make a reasonable and timely effort to

1 notify the individual of such request.

2 (i) This privacy policy is subject to enforcement by the  
3 Attorney General.

4 (j) All other laws and regulations regarding the  
5 collection, use, and maintenance of confidential taxpayer  
6 information remain fully applicable and binding. Without  
7 limitation, this subsection does not enlarge or limit the states'  
8 authority to:

9 (i) Conduct audits or other reviews as provided under the  
10 agreement and state law;

11 (ii) Provide records pursuant to the federal Freedom of  
12 Information Act, disclosure laws with governmental agencies, or  
13 other regulations;

14 (iii) Prevent, consistent with state law, disclosure of  
15 confidential taxpayer information;

16 (iv) Prevent, consistent with federal law, disclosure or  
17 misuse of federal return information obtained under a disclosure  
18 agreement with the Internal Revenue Service; and

19 (v) Collect, disclose, disseminate, or otherwise use  
20 anonymous data for governmental purposes.

21 Sec. 74. Section 77-2712.02, Revised Statutes  
22 Supplement, 2002, is amended to read:

23 77-2712.02. (1) The Legislature finds that a simplified  
24 sales and use tax system will reduce and over time eliminate the  
25 burden and cost for all sellers to collect this state's sales and  
26 use tax. The Legislature further finds that this state should  
27 participate in a multistate ~~discussions to review or amend the~~  
28 ~~terms of the~~ agreement to simplify and modernize sales and use tax



1 administration in order to substantially reduce the burden of tax  
2 compliance for all sellers and for all types of commerce.

3 (2) It is the purpose of such agreement to simplify and  
4 modernize sales and use tax administration in the member states in  
5 order to substantially reduce the burden of compliance. The  
6 agreement focuses on improving sales and use tax administration  
7 systems for all sellers and for all types of commerce through all  
8 of the following:

9 (a) State-level administration of sales and use tax  
10 collections;

11 (b) Uniformity in the state and local tax bases;

12 (c) Uniformity of major tax base definitions;

13 (d) A central, electronic registration system for all  
14 member states;

15 (e) Simplification of state and local tax rates;

16 (f) Uniform sourcing rules for all taxable transactions;

17 (g) Simplified administration of exemptions;

18 (h) Simplified tax returns;

19 (i) Simplification of tax remittances; and

20 (j) Protection of consumer privacy.

21 (3) This agreement shall not be construed as intending to  
22 influence a member state to impose a tax on or provide an exemption  
23 from tax for any item or service. However, exemptions granted  
24 shall adhere to uniform definitions as set out in the agreement.

25 Sec. 75. Section 77-2712.03, Revised Statutes  
26 Supplement, 2002, is amended to read:

27 77-2712.03. (1) The streamlined sales and use tax  
28 agreement, as adopted by the streamlined sales tax implementing

1 states on November 12, 2002, is hereby ratified by the Legislature.  
2 The Governor ~~is authorized and directed to~~ shall enter into the  
3 agreement, ~~subject to legislative approval,~~ with one or more states  
4 to simplify and modernize sales and use tax administration in order  
5 to substantially reduce the burden of tax compliance for all  
6 sellers and for all types of commerce. In furtherance of the  
7 agreement, the Department of Revenue is authorized to act jointly  
8 with other states that are ~~signatories to~~ members under Articles  
9 VII or VIII of the agreement to establish standards for  
10 certification of a certified service provider and certified  
11 automated system and establish performance standards for multistate  
12 sellers. The department is further authorized to take other  
13 actions permissible under law reasonably required to implement the  
14 provisions set forth in the Uniform Sales and Use Tax  
15 Administration Act agreement. Other actions authorized by this  
16 section include, but are not limited to, the adoption and  
17 promulgation of rules and regulations and the joint procurement,  
18 with other member states, of goods and services in furtherance of  
19 the agreement.

20 (2) The Tax Commissioner or his or her designee is  
21 authorized to represent Nebraska before the other member states  
22 ~~that are signatories to~~ under the agreement. ~~Any agreement under~~  
23 ~~this section shall be ratified by the Legislature by legislative~~  
24 ~~bill.~~ The state also agrees to participate in and comply with the  
25 procedures of and decisions made by the governing body of the  
26 member states. These provisions of the agreement include the  
27 creation of the organization as provided in Article VII of the  
28 agreement, the requirements for state entry and withdrawal as

1 provided in Article VIII of the agreement, amendments to the  
2 agreement, as provided in Article IX of the agreement, and a  
3 dispute resolution process as provided in Article X of the  
4 agreement.

5           Sec. 76.       Section 77-2712.04, Revised Statutes  
6 Supplement, 2002, is amended to read:

7           77-2712.04. No provision of the streamlined sales and  
8 use tax agreement in whole or in part invalidates or amends any  
9 provision of the law of Nebraska. Adoption and ratification of the  
10 agreement by Nebraska does not amend or modify any law of Nebraska.  
11 Any provision of the agreement that is in conflict with state law,  
12 whether adopted before, at, or after membership of Nebraska in the  
13 agreement, shall be implemented by legislation or rule and  
14 regulation, as is appropriate.

15           Sec. 77.       Section 77-2712.05, Revised Statutes  
16 Supplement, 2002, is amended to read:

17           77-2712.05. ~~The Governor shall not enter into the~~  
18 ~~agreement unless the agreement requires each state~~ By agreeing to  
19 the terms of the streamlined sales and use tax agreement, this  
20 state agrees to abide by the following requirements:

21           (1) Uniform state rate. ~~The agreement shall set~~ state  
22 shall comply with restrictions to achieve over time more uniform  
23 state rates through the following:

24           (a) Limiting the number of state rates;

25           (b) Limiting the application of maximums on the amount of  
26 state tax that is due on a transaction; and

27           (c) Limiting the application of thresholds on the  
28 application of state tax;

1           (2) Uniform standards. The ~~agreement shall establish~~  
2 state hereby establishes uniform standards for the following:

3           (a) Sourcing of transactions to taxing jurisdictions as  
4 provided in sections 49 to 52 of this act;

5           (b) Administration of exempt sales as set out by the  
6 agreement and using procedures as determined by the governing  
7 board;

8           (c) Allowances a seller can take for bad debts as  
9 provided in section 77-2708; and

10          (d) Sales and use tax returns and remittances. To comply  
11 with the agreement, the Tax Commissioner shall:

12           (i) Require only one remittance for each return except as  
13 provided in this subsection. If any additional remittance is  
14 required, it may only be required from retailers that collect more  
15 than thirty thousand dollars in sales and use taxes in the state  
16 during the preceding calendar year as provided herein. The amount  
17 of the additional remittance shall be determined through a  
18 calculation method rather than actual collections and shall not  
19 require the filing of an additional return;

20           (ii) Require, at his or her discretion, all remittances  
21 from sellers under models 1, 2, and 3 to be remitted  
22 electronically;

23           (iii) Allow for electronic payments by both Automated  
24 Clearing House credit and debit;

25           (iv) Provide an alternative method for making same day  
26 payments if an electronic funds transfer fails;

27           (v) Provide that if a due date falls on a legal banking  
28 holiday, the taxes are due to that state on the next succeeding

1 business day; and

2 (vi) Require that any data that accompanies a remittance  
3 be formatted using uniform tax type and payment type codes approved  
4 by the governing board of the member states to the streamlined  
5 sales and use tax agreement. +

6 (3) Uniform definitions. (a) The ~~agreement shall require~~  
7 ~~states to develop and adopt~~ state shall utilize the uniform  
8 definitions of sales and use tax terms as provided in the  
9 agreement. The definitions ~~shall~~ enable Nebraska to preserve its  
10 ability to make taxability and exemption choices not inconsistent  
11 with the uniform definitions;

12 (b) The state may enact a product-based exemption without  
13 restriction if the agreement does not have a definition for the  
14 product or for a term that includes the product. If the agreement  
15 has a definition for the product or for a term that includes the  
16 product, the state may exempt all items included within the  
17 definition but shall not exempt only part of the items included  
18 within the definition unless the agreement sets out the exemption  
19 for part of the items as an acceptable variation.

20 (c) The state may enact an entity-based or a use-based  
21 exemption without restriction if the agreement does not have a  
22 definition for the product whose use or purchase by a specific  
23 entity is exempt or for a term that includes the product. If the  
24 agreement has a definition for the product whose use or specific  
25 purchase is exempt, states may enact an entity-based or a use-based  
26 exemption that applies to that product as long as the exemption  
27 utilizes the agreement definition of the product. If the agreement  
28 does not have a definition for the product whose use or specific

1 purchase is exempt but has a definition for a term that includes  
2 the product, states may enact an entity-based or a use-based  
3 exemption for the product without restriction.

4 (d) For purposes of complying with the requirements in  
5 this section, the inclusion of a product within the definition of  
6 tangible personal property is disregarded;

7 (4) Central registration. ~~The agreement shall provide~~  
8 state shall participate in an electronic central registration  
9 system that allows a seller to register to collect and remit sales  
10 and use taxes for all member states. Under the system:

11 (a) A retailer registering under the agreement is  
12 registered in this state;

13 (b) The state agrees not to require the payment of any  
14 registration fees or other charges for a retailer to register in  
15 the state if the retailer has no legal requirement to register;

16 (c) A written signature from the retailer is not  
17 required;

18 (d) An agent may register a retailer under uniform  
19 procedures adopted by the member states pursuant to the agreement;

20 (e) A retailer may cancel its registration under the  
21 system at any time under uniform procedures adopted by the  
22 governing board. Cancellation does not relieve the retailer of its  
23 liability for remitting to the proper states any taxes collected;  
24 and

25 (f) When registering, the retailer that is registered  
26 under the agreement may select one of the following methods of  
27 remittances or other method allowed by state law to remit the taxes  
28 collected:

1           (i) Model 1, wherein a seller selects a certified service  
2 provider as an agent to perform all the seller's sales or use tax  
3 functions, other than the seller's obligation to remit tax on its  
4 own purchases;

5           (ii) Model 2, wherein a seller selects a certified  
6 automated system to use which calculates the amount of tax due on a  
7 transaction; and

8           (iii) Model 3, wherein a seller utilizes its own  
9 proprietary automated sales tax system that has been certified as a  
10 certified automated system;

11           (5) No nexus attribution. The ~~agreement shall provide~~  
12 state agrees that registration with the central registration system  
13 and the collection of sales and use taxes in the ~~member states~~  
14 state will not be used as a factor in determining whether the  
15 seller has ~~constitutional~~ nexus with a the state for any tax at any  
16 time;

17           (6) Local sales and use taxes. The agreement ~~shall~~  
18 ~~provide for~~ requires the reduction of the burdens of complying with  
19 local sales and use taxes ~~through~~ as provided in sections 13-319,  
20 13-324, 13-326, 77-27,142, 77-27,143, and 77-27,144 and section 7  
21 of this act that require the following:

22           (a) ~~Restricting variances~~ No variation between the state  
23 and local tax bases;

24           (b) Statewide administration of ~~Requiring states to~~  
25 ~~administer~~ all sales and use taxes levied by local jurisdictions  
26 within the state so that sellers collecting and remitting these  
27 taxes will not have to register or file returns with, remit funds  
28 to, or be subject to independent audits from local taxing

1 jurisdictions;

2 (c) Limitations on ~~Restricting~~ the frequency of changes  
3 in the local sales and use tax rates and setting effective dates  
4 for the application of local jurisdictional boundary changes to  
5 local sales and use taxes; and

6 (d) Uniform ~~Providing uniform~~ notice of changes in local  
7 sales and use tax rates and of changes in the boundaries of local  
8 taxing jurisdictions;

9 (7) Monetary allowances. The ~~agreement shall outline~~  
10 state agrees to allow any monetary allowances that are to be  
11 provided by the states to sellers or certified service providers in  
12 exchange for collecting sales and use taxes as provided in Article  
13 VI of the agreement;

14 (8) State compliance. The ~~agreement shall require each~~  
15 requires the state to certify compliance with the terms of the  
16 agreement prior to joining and to maintain compliance, under the  
17 laws of the member state, with all provisions of the agreement  
18 while a member;

19 (9) Consumer privacy. The ~~agreement shall require each~~  
20 ~~state to adopt~~ state hereby adopts a uniform policy for certified  
21 service providers that protects the privacy of consumers and  
22 maintains the confidentiality of tax information as provided in  
23 section 77-2711; and

24 (10) Advisory councils. The ~~agreement shall provide for~~  
25 state agrees to the appointment of an advisory council of  
26 private-sector representatives and an advisory council of nonmember  
27 state representatives to consult with in the administration of the  
28 agreement.



1                   Sec. 78. Section 77-2713, Reissue Revised Statutes of  
2 Nebraska, is amended to read:

3                   77-2713. (1) Any person required under the provisions of  
4 sections ~~77-2702.03~~ 77-2703 to 77-2713 and sections 8 to 47, 49 to  
5 52, and 59 to 69 of this act to collect, account for, or pay over  
6 any tax imposed by the Nebraska Revenue Act of 1967 who willfully  
7 fails to collect or truthfully account for or pay over such tax and  
8 any person who willfully attempts in any manner to evade any tax  
9 imposed by such provisions of such act or the payment thereof  
10 shall, in addition to other penalties provided by law, be guilty of  
11 a Class IV felony.

12                   (2) Any person who willfully aids or assists in,  
13 procures, counsels, or advises the preparation or presentation of a  
14 false or fraudulent return, affidavit, claim, or document under or  
15 in connection with any matter arising under sections 77-2703  
16 ~~77-2702.03~~ to 77-2713 and sections 8 to 47, 49 to 52, and 59 to 69  
17 of this act shall, whether or not such falsity or fraud is with the  
18 knowledge or consent of the person authorized or required to  
19 present such return, affidavit, claim, or document, be guilty of a  
20 Class IV felony.

21                   (3) A person who engages in business as a retailer in  
22 this state without a permit or permits or after a permit has been  
23 suspended and each officer of any corporation which so engages in  
24 business shall be guilty of a Class IV misdemeanor. Each day of  
25 such operation shall constitute a separate offense.

26                   (4) Any person who gives a resale certificate to the  
27 seller for property which he or she knows, at the time of purchase,  
28 is purchased for the purpose of use rather than for the purpose of

1 resale, lease, or rental by him or her in the regular course of  
2 business shall be guilty of a Class IV misdemeanor.

3 (5) Any violation of the provisions of sections  
4 ~~77-2702.03~~ 77-2703 to 77-2713 and sections 8 to 47, 49 to 52, and  
5 59 to 69 of this act, except as otherwise provided, shall be a  
6 Class IV misdemeanor.

7 (6) Any prosecution under sections ~~77-2702.03~~ 77-2703 to  
8 77-2713 and sections 8 to 47, 49 to 52, and 59 to 69 of this act  
9 shall be instituted within three years after the commission of the  
10 offense. If such offense is the failure to do an act required by  
11 any of such sections to be done before a certain date, a  
12 prosecution for such offense may be commenced not later than three  
13 years after such date. The failure to do any act required by  
14 sections ~~77-2702.03~~ 77-2703 to 77-2713 and sections 8 to 47, 49 to  
15 52, and 59 to 69 of this act shall be deemed an act committed in  
16 part at the principal office of the Tax Commissioner. Any  
17 prosecution under the provisions of the Nebraska Revenue Act of  
18 1967 may be conducted in any county where the person or corporation  
19 to whose liability the proceeding relates resides or has a place of  
20 business or in any county in which such criminal act is committed.  
21 The Attorney General shall have concurrent jurisdiction with the  
22 county attorney in the prosecution of any offenses under the  
23 provisions of the Nebraska Revenue Act of 1967.

24 Sec. 79. Section 77-27,119.03, Reissue Revised Statutes  
25 of Nebraska, is amended to read:

26 77-27,119.03. Notwithstanding any other provision of the  
27 Nebraska Revenue Act of 1967, the Tax Commissioner or any employee  
28 of the Department of Revenue may disclose the election of another

1 person made pursuant to section ~~77-2702.05~~ 14 of this act.

2           Sec. 80. Section 77-27,142, Reissue Revised Statutes of  
3 Nebraska, is amended to read:

4           77-27,142.       (1) Any incorporated municipality by  
5 ordinance of its governing body is hereby authorized to impose a  
6 sales and use tax of one-half percent, one percent, or one and  
7 one-half percent upon the same transactions that are sourced under  
8 the provisions of sections 49 to 52 of this act within such  
9 incorporated municipality on which the State of Nebraska is  
10 authorized to impose a tax pursuant to the Nebraska Revenue Act of  
11 1967, as amended from time to time. No sales and use tax shall be  
12 imposed pursuant to this section until an election has been held  
13 and a majority of the qualified electors have approved such tax  
14 pursuant to sections 77-27,142.01 and 77-27,142.02.

15           (2) A city of the metropolitan class is hereby authorized  
16 to increase any city sales and use tax existing on January 1, 1978,  
17 imposed pursuant to this section by an amount not to exceed  
18 one-half of one percent if the question of such tax increase is  
19 submitted to the voters of such city and the voters by a majority  
20 vote approve such increase. The question of such increase shall be  
21 submitted to the voters at the primary or general election in 1980  
22 if the city council shall submit a certified copy of a resolution  
23 to that effect to the election commissioner not later than  
24 forty-one days prior to the primary or general election.  
25 Notwithstanding the provisions of section 77-27,143, if the  
26 increase is approved by the voters at the primary or general  
27 election in 1980, the election commissioner shall file a certified  
28 copy of the election results with the Tax Commissioner on or before

1 the last day of the month in which the election is held. If the  
2 increase is not approved by the voters at the primary or general  
3 election in 1980, no tax increased pursuant to this section shall  
4 remain in effect after December 31, 1980.

5 (3) A city of the primary class is hereby authorized to  
6 increase any city sales and use tax existing on January 1, 1985,  
7 imposed pursuant to this section by an amount not to exceed  
8 one-half of one percent if the question of such tax increase is  
9 submitted to the voters of such city and the voters by a majority  
10 vote approve such increase. The question of such increase shall be  
11 submitted to the voters at the next primary or general election or  
12 at a special election if the city council shall submit a certified  
13 copy of a resolution proposing the tax increase to the election  
14 commissioner within a reasonable time prior to the primary,  
15 general, or special election. If the increase is approved by the  
16 voters at the primary, general, or special election, the election  
17 commissioner shall file a certified copy of the election results  
18 with the Tax Commissioner on or before the last day of the month in  
19 which the election is held. If the voters of a city of the primary  
20 class have not approved such an increase by December 31, 1987, the  
21 question of such an increase shall not be submitted thereafter to  
22 the voters and there shall be no increase in the city sales and use  
23 tax.

24 (4) A city of the first or second class or village is  
25 hereby authorized to increase any city sales and use tax existing  
26 on January 1, 1986, imposed pursuant to this section by an amount  
27 not to exceed one-half of one percent if the question of such tax  
28 increase is submitted to the voters of such city or village and the

1 voters by a majority vote approve such increase. The question of  
2 such increase shall be submitted to the voters at any primary or  
3 general election or at a special election if the city council or  
4 village board shall submit a certified copy of a resolution  
5 proposing the tax increase to the election commissioner or county  
6 clerk within a reasonable time prior to the primary, general, or  
7 special election. If the increase is approved by the voters at the  
8 primary, general, or special election, the election commissioner  
9 shall file a certified copy of the election results with the Tax  
10 Commissioner on or before the last day of the month in which the  
11 election is held.

12           Sec. 81. Section 77-27,143, Reissue Revised Statutes of  
13 Nebraska, is amended to read:

14           77-27,143. (1) The administration of all sales and use  
15 taxes adopted under the Local Option Revenue Act shall be by the  
16 Tax Commissioner who may prescribe forms and adopt and promulgate  
17 reasonable rules and regulations in conformity with the act for the  
18 making of returns and for the ascertainment, assessment, and  
19 collection of taxes imposed under such act. The incorporated  
20 municipality shall furnish a certified copy of the adopting or  
21 repealing ordinance to the Tax Commissioner in accordance with such  
22 rules and regulations as he or she may adopt and promulgate. For  
23 ordinances passed after October 1, 1969, the effective date shall  
24 be the first day of ~~the next~~ a calendar quarter following receipt  
25 by the Tax Commissioner of the certified copy of the ordinance if  
26 the certified copy of the adopted ordinance is received ~~sixty~~ at  
27 least one hundred twenty days prior to the start of the next  
28 calendar quarter. The Tax Commissioner shall provide at least

1 sixty days notice of the change in tax to retailers. Notice shall  
2 be provided to retailers within the municipality. Notice to  
3 retailers may be provided through the web site of the Department of  
4 Revenue or by other electronic means.

5 (2) For ordinances containing a termination date and  
6 passed after October 1, 1986, the termination date shall be the  
7 first day of a calendar quarter. The incorporated municipality  
8 shall furnish a certified statement to the Tax Commissioner no more  
9 than one hundred ~~twenty~~ eighty days and at least ~~sixty~~ one hundred  
10 twenty days prior to the termination date that the termination date  
11 stated in the ordinance is still valid. If the certified statement  
12 is not furnished within the prescribed time, the tax shall remain  
13 in effect, and the Tax Commissioner shall continue to collect the  
14 tax until the first day of the calendar quarter which is at least  
15 ~~sixty~~ one hundred twenty days after receipt of the certified  
16 statement notwithstanding the termination date stated in the  
17 ordinance. The Tax Commissioner shall provide at least sixty days  
18 notice of the termination of the tax to retailers. Notice shall be  
19 provided to retailers within the municipality. Notice to retailers  
20 may be provided through the web site of the department or by other  
21 electronic means.

22 (3) For sales and use tax purposes only, local  
23 jurisdiction boundary changes apply only on the first day of a  
24 calendar quarter after a minimum of one hundred twenty days' notice  
25 to the Tax Commissioner and sixty days notice to sellers.

26 (4) The state shall provide and maintain a data base that  
27 describes boundary changes for all local taxing jurisdictions.  
28 This data base shall include a description of any change and the

1 effective date of the change for sales and use tax purposes.

2 (5) The state shall provide and maintain a data base of  
3 all sales and use tax rates for all of the local jurisdictions  
4 levying taxes within the state. For the identification of  
5 counties, cities, and villages, codes corresponding to the rates  
6 shall be provided according to Federal Information Processing  
7 Standards as developed by the National Institute of Standards and  
8 Technology.

9 (6) The state shall provide and maintain a data base that  
10 assigns each five digit and nine digit zip code within the state to  
11 the proper tax rates and jurisdictions. For purposes of the  
12 streamlined sales and use tax agreement, the data base shall apply  
13 the lowest combined tax rate imposed in the zip code area if the  
14 area includes more than one tax rate in any level of taxing  
15 jurisdictions. If a nine digit zip code designation is not  
16 available for a street address or if a seller is unable to  
17 determine the nine digit zip code designation of a purchaser after  
18 exercising due diligence to determine the designation, the seller  
19 may apply the rate for the five digit zip code area. For purposes  
20 of this section, there is a rebuttable presumption that a seller  
21 has exercised due diligence if the seller has attempted to  
22 determine the nine digit zip code designation by utilizing software  
23 approved by the governing board that makes this designation from  
24 the street address and the five digit zip code of the purchaser.

25 (7) For purposes of the streamlined sales and use tax  
26 agreement, the state shall participate with other member states in  
27 the development of an address-based system for assigning taxing  
28 jurisdictions. The system shall meet the requirements developed

1 pursuant to the federal Mobile Telecommunications Sourcing Act, 4  
2 U.S.C. 119, as such act existed on January 1, 2003. The governing  
3 board may allow a member state to require sellers that register  
4 under the agreement to use an address-based system provided by that  
5 member state. If any member state develops an address-based  
6 assignment system pursuant to the Mobile Telecommunications  
7 Sourcing Act, 4 U.S.C 119, as such act existed on January 1, 2003,  
8 a seller may use that system in place of the system provided for in  
9 subsection (6) of this section.

10 (8) Pursuant to the streamlined sales and use tax  
11 agreement, the state shall relieve retailers and certified service  
12 providers from liability to the state and local jurisdictions for  
13 having charged and collected the incorrect amount of sales or use  
14 tax resulting from the retailer or certified service provider  
15 relying on erroneous data provided by a member state on tax rates,  
16 boundaries, or taxing jurisdiction assignments. A member state  
17 that provides an address-based system for assigning taxing  
18 jurisdictions pursuant to subsection (7) of this section or  
19 pursuant to the federal Mobile Telecommunications Sourcing Act, 4  
20 U.S.C. 119, as such act existed on January 1, 2003, will not be  
21 required to provide liability relief for errors resulting from the  
22 reliance on the information provided by the member state under the  
23 provisions of subsection (6) of this section.

24 (9) The electronic data bases provided for in this  
25 section shall be in a downloadable format approved by the governing  
26 board pursuant to the streamlined sales and use tax agreement. The  
27 provisions of subsections (6) and (7) of this section do not apply  
28 when the purchased product is received by the purchaser at the



1 business location of the seller.

2           Sec. 82. Section 77-27,147, Revised Statutes Supplement,  
3 2002, is amended to read:

4           77-27,147. All relevant provisions of the Nebraska  
5 Revenue Act of 1967, as amended from time to time, and not  
6 inconsistent with the Local Option Revenue Act, shall govern  
7 transactions, proceedings, and activities pursuant to any tax  
8 imposed under the Local Option Revenue Act.

9           For the purposes of the Local Option Revenue Act, all  
10 retail sales, rentals, and leases, as defined and described in the  
11 Nebraska Revenue Act of 1967, shall be sourced according to the  
12 provisions of sections 49 to 52 of this act. ~~are consummated.~~

13           ~~(1) At the place where title, possession, or segregation~~  
14 ~~takes place, with the exception of sales or leases or rentals for~~  
15 ~~more than one year of motor vehicles, trailers, semitrailers, and~~  
16 ~~commencing January 1, 1997, motorboats, if a purchaser takes~~  
17 ~~possession of tangible personal property within a municipality~~  
18 ~~which has enacted a tax under the Local Option Revenue Act,~~  
19 ~~regardless of the business location of the Nebraska retailer,~~

20           ~~(2) At the point of delivery of utility services and~~  
21 ~~community antenna television services or where such services are~~  
22 ~~provided, with the exception that (a) Nebraska intrastate message~~  
23 ~~toll telephone and telegraph services, other than mobile~~  
24 ~~telecommunications service as described in section 77-2706.02,~~  
25 ~~shall be consummated in the municipality where the customer is~~  
26 ~~normally billed for such service and (b) such mobile~~  
27 ~~telecommunications service that originates and terminates in the~~  
28 ~~same state shall be consummated in the municipality where the~~

1 customer has a place of primary use,

2           (3) At the physical location of individual vending  
3 machines, and

4           (4) At the place designated on the application for  
5 registration for motor vehicles, trailers, semitrailers, and  
6 commencing January 1, 1997, motorboats sold or leased or rented for  
7 more than one year.

8           Sec. 83. Section 77-27,223, Revised Statutes Supplement,  
9 2002, is amended to read:

10           77-27,223. A county may raise revenue by levying and  
11 collecting a license or occupation tax on any person, partnership,  
12 limited liability company, corporation, or business engaged in the  
13 sale of admissions to recreational, cultural, entertainment, or  
14 concert events that are subject to sales tax under sections  
15 ~~77-2702.03~~ 77-2703 to 77-2713 and sections 8 to 47, 49 to 52, and  
16 59 to 69 of this act that occur outside any incorporated  
17 municipality, but within the boundary limits of the county. The  
18 tax shall be uniform in respect to the class upon which it is  
19 imposed. The tax shall be based upon a certain percentage of gross  
20 receipts from sales in the county of the person, partnership,  
21 limited liability company, corporation, or business, and may  
22 include sales of other goods and services at such locations and  
23 events, not to exceed one and one-half percent. A county may not  
24 impose the tax on sales that are within an incorporated city or  
25 village. No county shall levy and collect a license or occupation  
26 tax under this section unless approved by a majority of those  
27 voting on the question at a special, primary, or general election.

28           Sec. 84. Sections 74 to 77, 84, and 85 of this act

1 become operative on their effective date. The other sections of  
2 this act become operative on January 1, 2004.

3           Sec. 85.     Original sections 77-2712.02 to 77-2712.05,  
4 Revised Statutes Supplement, 2002, are repealed.

5           Sec. 86.     Original sections 13-324, 77-3,117, 77-2702.04  
6 to 77-2702.06, 77-2702.08, 77-2702.10, 77-2702.18 to 77-2702.26,  
7 77-2704.10, 77-2704.13, 77-2704.14, 77-2704.24, 77-2708.01,  
8 77-2713, 77-27,119.03, 77-27,142, and 77-27,143, Reissue Revised  
9 Statutes of Nebraska, and sections 9-306.01, 13-319 13-326,  
10 77-2701, 77-2702.03, 77-2702.07, 77-2702.09, 77-2702.11, 77-2702.14  
11 to 77-2702.16, 77-2703, 77-2704.09, 77-2704.26, 77-2705, 77-2708,  
12 77-2711, 77-27,147, and 77-27,223, Revised Statutes Supplement,  
13 2002, are repealed.

14           Sec. 87.     The following sections are outright repealed:  
15 Section 77-2702.12, Reissue Revised Statutes of Nebraska, and  
16 sections 77-2702.13, 77-2702.17, 77-2706.02, 77-2712, 77-2712.01,  
17 and 77-2712.08, Revised Statutes Supplement, 2002.